

**ARKANSAS CODE
OF 1987
ANNOTATED**

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ARKANSAS CODE OF 1987 ANNOTATED



VOLUME 13B 2009 Replacement TITLE 15: NATURAL RESOURCES AND ECONOMIC DEVELOPMENT (CHAPTERS 40–76)

Prepared by the Editorial Staff of the Publisher

Under the Direction and Supervision of the
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Sources

This volume contains legislation enacted by the Arkansas General Assembly through the 2009 Regular Session. Annotations are to the following sources:

Arkansas Supreme Court and Arkansas Court of Appeals Opinions through 2009 Ark. LEXIS 489 (October 5, 2009) and 2009 Ark. App. LEXIS 614 (July 1, 2009).

Federal Supplement through September 1, 2009.

Federal Reporter 3d Series through September 1, 2009.

United States Supreme Court Reports through September 1, 2009.

Bankruptcy Reporter through September 1, 2009.

Arkansas Law Notes through the 2008 Edition.

Arkansas Law Review through Volume 61, p. 787.

University of Arkansas at Little Rock Law Review through Volume 30, p. 267.

ALR 6th through Volume 17, p. 757.

ALR Fed. 2d through Volume 21, p. 361.

Titles of the Arkansas Code

- | | |
|---|---|
| 1. General Provisions | 16. Practice, Procedure, and Courts |
| 2. Agriculture | 17. Professions, Occupations, and Businesses |
| 3. Alcoholic Beverages | 18. Property |
| 4. Business and Commercial Law | 19. Public Finance |
| 5. Criminal Offenses | 20. Public Health and Welfare |
| 6. Education | 21. Public Officers and Employees |
| 7. Elections | 22. Public Property |
| 8. Environmental Law | 23. Public Utilities and Regulated Industries |
| 9. Family Law | 24. Retirement and Pensions |
| 10. General Assembly | 25. State Government |
| 11. Labor and Industrial Relations | 26. Taxation |
| 12. Law Enforcement, Emergency Management, and Military Affairs | 27. Transportation |
| 13. Libraries, Archives, and Cultural Resources | 28. Wills, Estates, and Fiduciary Relationships |
| 14. Local Government | |
| 15. Natural Resources and Economic Development | |

User's Guide

Differences in language, subsection order, punctuation, and other variations in the statute text from legislative acts, supplement pamphlets, and previous versions of the bound volume, are editorial changes made at the direction of the Arkansas Code Revision Commission pursuant to the authority granted in § 1-2-303.

Many of the Arkansas Code's research aids, as well as its organization and other features, are described in the User's Guide, which appears near the beginning of the bound Volume 1 of the Code.

TITLE 15

NATURAL RESOURCES AND ECONOMIC DEVELOPMENT

(CHAPTERS 1-39 IN VOLUME 13A)

SUBTITLE 1. DEVELOPMENT OF ECONOMIC AND NATURAL RESOURCES GENERALLY

CHAPTER.

1. GENERAL PROVISIONS.
2. SOUTHERN GROWTH POLICIES AGREEMENT.
3. SCIENCE AND TECHNOLOGY AUTHORITY.
4. DEVELOPMENT OF BUSINESS AND INDUSTRY GENERALLY.
5. ARKANSAS DEVELOPMENT FINANCE AUTHORITY.
6. ARKANSAS RURAL DEVELOPMENT PROGRAM ACT.
- 7-8. [RESERVED.]
9. COMMISSION ON INFORMATION AGE COMMUNITIES ACT.
10. ENERGY CONSERVATION AND DEVELOPMENT.
11. PUBLICITY AND TOURISM.
12. ARKANSAS NATURAL AND CULTURAL RESOURCES COUNCIL.
13. ARKANSAS ALTERNATIVE FUELS DEVELOPMENT ACT.
14. ARKANSAS RETIREMENT COMMUNITY PROGRAM ACT.
- 15-19. [RESERVED.]

SUBTITLE 2. LAND AND WATER RESOURCES GENERALLY

CHAPTER.

20. GENERAL PROVISIONS.
21. LAND.
22. WATER RESOURCES.
23. RIVERS AND CREEKS.
24. FLOOD CONTROL.
- 25-29. [RESERVED.]

SUBTITLE 3. FOREST RESOURCES

CHAPTER.

30. GENERAL PROVISIONS. [RESERVED.]
31. ARKANSAS FORESTRY COMMISSION.
32. LOGGING.
33. SOUTH CENTRAL INTERSTATE FOREST FIRE PROTECTION COMPACT.
- 34-39. [RESERVED.]

SUBTITLE 4. WILDLIFE RESOURCES

CHAPTER.

40. GENERAL PROVISIONS. [RESERVED.]
41. ADMINISTRATION AND ENFORCEMENT OF WILDLIFE REGULATIONS.
42. LICENSES.
43. HUNTING AND FISHING REGULATIONS.
44. MISCELLANEOUS WILDLIFE REGULATIONS.
45. WILDLIFE PRESERVATION.

CHAPTER.

- 46. CONTROL OF PREDATORS AND PESTS.
- 47. WILDLIFE RECREATION FACILITIES.
- 48-54. [RESERVED.]

SUBTITLE 5. MINERAL RESOURCES GENERALLY

CHAPTER.

- 55. GENERAL PROVISIONS.
- 56. MINERAL LANDS AND INTERESTS.
- 57. MINING AND RECLAMATION GENERALLY.
- 58. THE ARKANSAS SURFACE COAL MINING AND RECLAMATION ACT.
- 59. WEIGHING OF COAL AND MINERALS.
- 60. MERCURY REFINERS.
- 61-69. [RESERVED.]

SUBTITLE 6. OIL, GAS, AND BRINE

CHAPTER.

- 70. GENERAL PROVISIONS. [RESERVED.]
- 71. OIL AND GAS COMMISSION.
- 72. OIL AND GAS PRODUCTION AND CONSERVATION.
- 73. OIL AND GAS LEASES AND LEASE INTERESTS.
- 74. MEASUREMENT, INSPECTION, AND SALE OF OIL AND GAS.
- 75. LIQUEFIED PETROLEUM GASES.
- 76. BRINE.

SUBTITLE 4. WILDLIFE RESOURCES

CHAPTER 40
GENERAL PROVISIONS

[Reserved]

CHAPTER 41
ADMINISTRATION AND ENFORCEMENT OF WILDLIFE
REGULATIONS

SUBCHAPTER.

- 1. ARKANSAS STATE GAME AND FISH COMMISSION.
- 2. ENFORCEMENT GENERALLY.
- 3. ARKANSAS HUNTING HERITAGE PROTECTION ACT.

A.C.R.C. Notes. References to "this chapter" in §§ 15-41-101 [repealed], 15-41-102, 15-41-103 [repealed], 15-41-104 [repealed], 15-41-105, 15-41-106 [repealed], 15-41-107 [repealed], 15-41-108 — 15-41-111, 15-41-112 [repealed], 15-41-113, 15-41-114 and subchapter 2 may not apply to §§ 15-41-115, 15-41-116 [repealed], and 15-41-117 [repealed] which

were enacted subsequently.

Publisher's Notes. Acts 1943, No. 146, § 20, provided that nothing in the act should repeal, amend, alter, or change any preexisting acts.

Preambles. Acts 1943, No. 146 contained a preamble which read: "Whereas, the Game and Fish Commission has been heretofore created and its duties pre-

scribed by law; and

"Whereas, many of the laws pertaining to game and fish and enforcements of said laws for their protection are contained in acts of the legislature running back many years; and

"Whereas, many justices of the peace and other enforcement officers do not have all the acts of Arkansas containing these laws;

"Now, therefore, the game and fish laws should be codified and this bill is offered in that purpose...."

Effective Dates. Acts 1917, No. 133, § 67: approved Feb. 23, 1917. Emergency declared.

Acts 1979, No. 930, § 12: July 1, 1979. Emergency clause provided: "It is hereby found and determined by the Seventy-

Second General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1979 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1979 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1979."

RESEARCH REFERENCES

Am. Jur. 35 Am. Jur. 2d, Fish & G., § 29 et seq.

C.J.S. 36A C.J.S., Fish, § 26 et seq.
38 C.J.S., Game, § 7 et seq.

SUBCHAPTER 1 — ARKANSAS STATE GAME AND FISH COMMISSION

SECTION.

- 15-41-101. [Repealed.]
- 15-41-102. Expenses — Special allowance.
- 15-41-103. [Repealed.]
- 15-41-104. [Repealed.]
- 15-41-105. Programs for migratory waterfowl.
- 15-41-106. [Repealed.]
- 15-41-107. [Repealed.]
- 15-41-108. Cutting timber on commission land — Environmental impact statement.
- 15-41-109. Transfer of state-owned land.

SECTION.

- 15-41-110. Interest earned on game and fish funds.
- 15-41-111. Moneys from hunting license fees.
- 15-41-112. [Repealed.]
- 15-41-113. Prohibition on enforcement of regulation against dogs running at large.
- 15-41-114. Uniform allowance for uniformed employees.
- 15-41-115. Rewards.
- 15-41-116. [Repealed.]
- 15-41-117. [Repealed.]

A.C.R.C. Notes. References to "this chapter" in §§ 15-41-101 [repealed], 15-41-102, 15-41-103 [repealed], 15-41-104 [repealed], 15-41-105, 15-41-106 [repealed], 15-41-107 [repealed], 15-41-108 — 15-41-111, 15-41-112 [repealed], 15-41-113 and 15-41-114 may not apply to §§ 15-41-115, 15-41-116 [repealed], and 15-41-117 [repealed] which were enacted subsequently.

Publisher's Notes. Acts 1951, No. 356, § 1, provided that the State of Arkansas assented to the act of Congress entitled "An Act to provide that the United States shall aid the States in fish restoration and management projects, and for other purposes," 16 U.S.C. 777 — 777k. Acts 1951, No. 356, § 1, further authorized, empowered, and directed the Arkansas State Fish and Game Commission to perform

the acts necessary to conduct and establish cooperative fish restoration projects as defined in the federal act.

Cross References. Arkansas State Game and Fish Commission, Ark. Const. Amend. 35.

Preambles. Acts 1969, No. 367, contained a preamble which read: "Whereas, the Arkansas Game and Fish Commission has promulgated regulations prohibiting dogs to run at large within certain periods of the year; and

"Whereas, this regulation is allegedly for the purpose of forbidding dogs to run at large during certain seasons of the year to protect wildlife, yet such regulation prohibits individuals who utilize dogs with respect to livestock, farming, and other legal activities in circumstances where the use thereof poses no threat to wildlife; and

"Whereas, such regulation prohibits fox hunters from the use of their dogs during certain seasons of the year, yet there has been no established proof that the running of dogs during such season poses any threat to wildlife...."

Effective Dates. Acts 1939, No. 347, § 17: approved Mar. 16, 1939. Emergency clause provided: "It is hereby found and declared, because of the pressing need for changes in existing laws relating to the conservation and propagation of game and fish in the State of Arkansas, an emergency is hereby found and declared to exist and this act, being necessary for the preservation of the public peace, health, and safety, the same shall take effect and be in force from and after its passage."

Acts 1945, No. 4, § 4: Jan. 23, 1945. Emergency clause provided: "It being necessary for the preservation of the public peace, health, and welfare of the state, an emergency is hereby declared and this act shall take full force and effect immediately upon its passage and approval."

Acts 1969, No. 367, § 5: emergency failed to pass.

Acts 1981, No. 635, § 11: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the Seventy-Third General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1981 is essential to the operation of the agency for which the appropriations in this Act are provided,

and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1981 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1981."

Acts 1983, No. 327, § 4: Mar. 3, 1983. Emergency clause provided: "It has hereby been found and determined by the General Assembly of the State of Arkansas that interest earned on balances of funds in the State Treasury administered by the Game and Fish Commission are not being used for Game and Fish Commission purposes while there is an urgent need for all available funds for the operation of the Game and Fish Commission. Therefore, an emergency is hereby declared to exist and this Act being necessary for the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 333, § 15: July 1, 1985. Emergency clause provided: "It is hereby found and determined by the Seventy-Fifth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1985 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1985 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1985."

Acts 1989 (1st Ex. Sess.), No. 156, § 11: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1989 is

essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1989 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1989."

Acts 1993, No. 799, § 13: July 1, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1993 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1993 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1993."

Acts 1995, No. 231, § 13: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1995 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1995 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995."

Acts 1995, No. 369, § 7: Feb. 20, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that Amendment Number 35 to the Arkansas Constitution requires the General Assembly to establish the maximum annual resident hunting and fishing license fees that may be charged by the Arkansas Game and Fish Commission; that Amendment 35 to the Arkansas Constitution requires all fees, monies, or funds arising from all sources by the operation and transaction of the Arkansas Game and Fish Commission to be deposited in the Game Protection Fund in the State Treasury; and that the immediate passage of this Act is necessary to enable the Arkansas Game and Fish Commission to efficiently operate the game and fish program. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 189, § 13: July 1, 1997. Emergency clause provided: "It is hereby found and determined by the Eighty-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1997 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1997 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1997."

Acts 1999, No. 1508, § 19: Apr. 15, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that this act makes various technical corrections in the Arkansas Code; that this act further clarifies the law to provide that the Arkansas Code Revision Commission may correct errors resulting from enactments of prior sessions; and that this act should go into effect immediately in order to be

applicable during the codification process of the enactments of this regular session. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden it shall become effective on the date the last house overrides the veto."

Acts 2003 (1st Ex. Sess.), No. 41, § 13: July 1, 2003. Emergency clause provided: "It is found and determined by the Gen-

eral Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2003 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2003 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2003."

CASE NOTES

Fish.

The Arkansas State Game and Fish Commission was authorized to adopt humanely safe methods of fish population

control under funding provisions of Ark. Const., Amend. 35, § 8. *Arkansas State Game & Fish Comm'n v. Eubank*, 256 Ark. 930, 512 S.W.2d 540 (1974).

15-41-101. [Repealed.]

Publisher's Notes. This section, concerning the authority of the director, was repealed by Acts 1999, No. 1557, § 1. This

section was derived from Acts 1939, No. 347, § 13; A.S.A. 1947, § 47-117.

15-41-102. Expenses — Special allowance.

(a) The Director of the Arkansas State Game and Fish Commission, at the discretion of the Arkansas State Game and Fish Commission, may be reimbursed actual costs for travel expenses incurred while performing official commission duties.

(b) Due to his or her exacting and special duties, the Director of the Arkansas State Game and Fish Commission is hereby authorized an expense allowance of four hundred dollars (\$400) per month upon approval of the Arkansas State Game and Fish Commission.

History. Acts 1979, No. 630, § 6; 1981, No. 635, § 6; A.S.A. 1947, § 47-103.1;

Acts 1989 (1st Ex. Sess.), No. 156, § 7; 1993, No. 799, § 8.

15-41-103. [Repealed.]

Publisher's Notes. This section, concerning powers and duties generally, was repealed by Acts 1999, No. 1557, § 2. The

section was derived from Acts 1917, No. 133, § 10; C. & M. Dig., § 4763; Pope's Dig., § 5847; A.S.A. 1947, § 47-106.

15-41-104. [Repealed.]

Publisher's Notes. This section, concerning conservation and propagation of game and fish, was repealed by Acts 1999, No. 1557, § 3. This section was derived from Acts 1917, No. 133, §§ 6-8; C. & M. Dig., §§ 4760-4762; Pope's Dig., §§ 5844-5846; A.S.A. 1947, §§ 47-108, 47-109, 47-110.

15-41-105. Programs for migratory waterfowl.

The Arkansas State Game and Fish Commission is directed to emphasize programs for migratory waterfowl.

History. Acts 1979, No. 930, § 7.

15-41-106. [Repealed.]

Publisher's Notes. This section, concerning permits for scientific and propagative purposes, was repealed by Acts 1999, No. 1557, § 4. The section was derived from Acts 1927, No. 160, § 11; Pope's Dig., § 5896; A.S.A. 1947, § 47-111.

15-41-107. [Repealed.]

Publisher's Notes. This section, concerning cooperation with United States in national forests, was repealed by Acts 1999, No. 1557, § 5. This section was derived from Acts 1945, No. 4, §§ 1, 2; A.S.A. 1947, §§ 47-113, 47-114.

15-41-108. Cutting timber on commission land — Environmental impact statement.

(a)(1) The General Assembly recognizes the importance of preserving the environment of this state.

(2) The General Assembly is further aware of the provisions of Arkansas Constitution, Amendment 35, which created the Arkansas State Game and Fish Commission and granted to the Arkansas State Game and Fish Commission broad authority to manage and regulate the fish and wildlife resources of this state.

(3) It is the intent of this section to establish reasonable procedures whereby the Arkansas State Game and Fish Commission shall, in the management of the fish and wildlife resources of this state and the property belonging to the Arkansas State Game and Fish Commission to be used in connection therewith, perform such functions and duties in accordance with sound principles of environmental preservation.

(4) In order to accomplish this purpose, it is the purpose of this section to establish a requirement that the Arkansas State Game and Fish Commission shall make an environmental impact statement before cutting timber on lands belonging to the Arkansas State Game and Fish Commission and to authorize the Arkansas Natural Heritage Commission to hold public hearings thereon in order to make recommendations to the Arkansas State Game and Fish Commission in regard to the environmental impact of the proposed cutting of timber upon the environment of this state.

(b)(1) Before the Arkansas State Game and Fish Commission shall undertake, through its own personnel or equipment, or through contract let to a private individual or firm, the cutting of timber on lands belonging to the Arkansas State Game and Fish Commission, including selective cutting of timber if needed, the Arkansas State Game and Fish Commission shall:

(A) Cause an environmental impact study to be made;

(B) Prepare a written environmental impact statement in regard to the proposed timber cutting; and

(C) File a copy of the environmental impact statement with the Arkansas Natural Heritage Commission.

(2) Upon receipt of the environmental impact statement, the Arkansas Natural Heritage Commission shall study the proposed cutting of timber as outlined by the Arkansas State Game and Fish Commission and shall hold a public hearing within sixty (60) days of the receipt of the environmental impact statement.

(3) At the hearing, the Arkansas Natural Heritage Commission shall receive testimony and evidence from the Arkansas State Game and Fish Commission and from other interested persons, groups, or associations in regard to the anticipated and probable impact upon the environment of the proposed cutting of timber as outlined by the Arkansas State Game and Fish Commission.

(4) The Arkansas Natural Heritage Commission, within thirty (30) days from the date of holding the hearing, shall file with the Arkansas State Game and Fish Commission its evaluation of the proposed cutting of timber and shall include therein a statement of the Arkansas Natural Heritage Commission's recommendations in regard to the proposed cutting of timber.

(5) As used in this section, the reference to proposals to cut timber, including the selective cutting of timber, if needed, on lands belonging to the Arkansas State Game and Fish Commission, shall not be applicable to the cutting or sale of salvageable timber in connection with the construction of levees, structures, access of parking areas, boat launching ramps, food plots, or roads.

(c) If the Arkansas State Game and Fish Commission shall fail or refuse to make an environmental impact statement as required in subsection (a) of this section, any citizen of this state may bring an action in a court of competent jurisdiction located within the county in which the proposed timber is to be cut to enjoin the Arkansas State Game and Fish Commission from cutting the timber until an environmental impact statement is made and filed with the Arkansas Natural Heritage Commission. The Arkansas Natural Heritage Commission shall hold a public hearing thereon as required in this section and file its report and recommendations with the Arkansas State Game and Fish Commission.

15-41-109. Transfer of state-owned land.

The Arkansas State Game and Fish Commission shall be authorized to apply to the Commissioner of State Lands for the transfer of any state-owned land or land the title to which has reverted to the state by reason of tax delinquency and which is deemed by the Arkansas State Game and Fish Commission as suitable and desirable for game or fish refuge areas or public hunting or fishing areas or other purposes allied to the development of wildlife resources and that are not suitable for agricultural or industrial uses. The Commissioner of State Lands is authorized and directed to make the transfers after receipt of sufficient proof of the nature of lands desired, and of the need of the Arkansas State Game and Fish Commission for the land. Any transfers shall operate as an appropriation of the land for game or fish refuge areas, public hunting and fishing areas, or other uses as may be assigned to the land by the Arkansas State Game and Fish Commission forever. The transfers shall be a bar to any grants by this state of the land so transferred or any interest in the land for any purpose whatsoever. Provided, that any lands so acquired cannot be sold by the Arkansas State Game and Fish Commission but shall revert to the state if the lands are not developed within two (2) years after acquisition or at any time the lands are no longer desired by the commission.

History. Acts 1943, No. 146, § 18;
A.S.A. 1947, § 47-128.

CASE NOTES**Reversion.**

Land which was transferred by the state to the Game and Fish Commission pursuant to this section reverted to the state where the lands were not developed during the first two years after the com-

mission received its title and the taxpayer who paid taxes on the land for more than 15 years in unbroken succession redeemed the property. *Baker v. Certain Lands*, 19 Ark. App. 253, 720 S.W.2d 318 (1986).

15-41-110. Interest earned on game and fish funds.

(a) The Treasurer of State shall on the first day of business of the month compute the average daily balance of the Game Protection Fund or any other funds administered by the Arkansas State Game and Fish Commission during the preceding month. The Treasurer of State shall transfer on that day to the Game Protection Fund interest on the average daily balances to be computed at a rate equivalent to the average rate of interest earned on all State Treasury funds invested.

(b) All interest earned on the Arkansas State Game and Fish Commission funds shall be classified as special revenues and, after deducting three percent (3%) for credit to the Constitutional Officers Fund and State Central Services Fund, the Treasurer of State shall credit the remaining interest earned to the Game Protection Fund.

History. Acts 1983, No. 327, §§ 1, 2; Fund, § 19-5-205.
A.S.A. 1947, §§ 47-129.1, 47-129.2.

Cross References. Constitutional Officers Fund and State Central Services Special revenues, §§ 19-6-107, 19-6-301, 19-6-420.

15-41-111. Moneys from hunting license fees.

No funds accruing to the State of Arkansas from license fees paid by hunters and fishermen shall be diverted for any other purpose than the administration of the Arkansas State Game and Fish Commission.

History. Acts 1943, No. 146, § 9; 1951, No. 356, § 1; A.S.A. 1947, §§ 47-134, 47-502.

15-41-112. [Repealed.]

Publisher's Notes. This section, concerning free transportation, was repealed by Acts 1999, No. 1557, § 6. The section was derived from Acts 1917, No. 133, § 4; C. & M. Dig., § 4765; Pope's Dig., § 5849; A.S.A. 1947, § 47-105.

15-41-113. Prohibition on enforcement of regulation against dogs running at large.

The General Assembly declares that any employee of the Arkansas State Game and Fish Commission enforcing or attempting to enforce the existing regulations of the commission with respect to dogs running at large shall immediately, upon conviction thereof, be discharged from employment and shall be ineligible for reemployment by the commission. In addition, any employee or official of the commission attempting to enforce such regulation in violation of this section shall be subject to a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) or imprisoned in the county jail not less than thirty (30) days nor more than ninety (90) days, or be both so fined and imprisoned. Each violation of this section shall constitute a separate offense and shall be punishable accordingly.

History. Acts 1969, No. 367, § 2; A.S.A. 1947, § 47-108.2.

15-41-114. Uniform allowance for uniformed employees.

A maximum of one hundred fifty dollars (\$150) per month shall be payable to each uniformed full-time certified enforcement employee, and a maximum of one hundred dollars (\$100) per month shall be payable to each uniformed nonenforcement employee for the purchase and maintenance of uniforms worn full-time in the official duties of the Arkansas State Game and Fish Commission.

History. Acts 1985, No. 333, § 6; A.S.A. 1947, § 47-137; Acts 1997, No. 189, § 8; 2003 (1st Ex. Sess.), No. 41, § 7.

A.C.R.C. Notes. Acts 2001, No. 1460, § 8, provided: "UNIFORM ALLOWANCE. Uniform allowance for uniformed employees. A maximum of one hundred and fifty dollars (\$150.00) per month shall be pay-

able to each uniformed fulltime certified enforcement employee, and a maximum of one hundred dollars (\$100.00) per month shall be payable to each uniformed non-enforcement employee for the purchase

and maintenance of uniforms worn full time in the official duties of the Arkansas Game and Fish Commission. The provisions of this section shall be in effect only from July 1, 2001 through June 30, 2003."

15-41-115. Rewards.

The Arkansas State Game and Fish Commission is authorized to promulgate rules and regulations for the eligibility, amounts, and payment of rewards to individuals providing information leading to the arrest of violators of commission regulations.

History. Acts 1995, No. 231, § 6.

A.C.R.C. Notes. References to "this chapter" in §§ 15-41-101 [repealed], 15-41-102, 15-41-103 [repealed], 15-41-104 [repealed], 15-41-105, 15-41-106 [repealed], 15-41-107 [repealed], 15-41-108 — 15-41-111, 15-41-112 [repealed], 15-41-113 and 15-41-114 may not apply to this section which was enacted subsequently.

Acts 2001, No. 1460, § 6, provided: "PAYMENT OF REWARDS. The Arkansas Game and Fish Commission is hereby authorized to promulgate rules and regulations for the eligibility, amounts and payment of rewards to individuals providing information leading to the arrest of violators of Game and Fish Commission regulations. These rewards shall be payable from the Game Protection Fund from

the Commission's Maintenance and General Operation appropriation as herein appropriated in Section 3, Item No. (04)(A). The provisions of this section shall be in effect only from July 1, 2001 through June 30, 2003."

Acts 2001, No. 1460, § 6 did not specifically amend or supersede this section.

Acts 2009, No. 1417, § 5, provided: "PAYMENT OF REWARDS. Payment of rewards shall be from the Game Protection Fund from the Commission's Maintenance and General Operation appropriation as herein appropriated in Section 3, Item No. (05)(A).

"The provisions of this section shall be in effect only from July 1, 2009 through June 30, 2010."

15-41-116. [Repealed.]

A.C.R.C. Notes. This section, concerning exemption of commission from provisions of § 19-5-203(b)(2)(A), was repealed by Acts 1997, No. 59, § 1, as a result of the approval by voters in the November general election of a proposed amendment to the Arkansas Constitution which provides

for the levy of a one-eighth of one percent ($\frac{1}{8}$ of 1%) sales and use tax, forty-five percent (45%) of which will be received by the Arkansas State Game and Fish Commission. The section was derived from Acts 1995, No. 369, § 3.

15-41-117. [Repealed.]

Publisher's Notes. This section, concerning rewards, was repealed by Acts

1999, No. 1508, § 7. The section was derived from Acts 1997, No. 189, § 6.

SUBCHAPTER 2 — ENFORCEMENT GENERALLY

SECTION.

15-41-201, 15-41-202. [Repealed.]

15-41-203. Authorized searches.

15-41-204 — 15-41-208. [Repealed.]

SECTION.

15-41-209. Fines, fees, and costs.

15-41-210, 15-41-211. [Repealed.]

Effective Dates. Acts 1919, No. 276, § 25: approved Mar. 17, 1919. Emergency clause provided: "This bill being necessary for the immediate preservation of the pub-

lic peace, health and safety, an emergency is hereby declared, and this act shall take effect and be in force from and after its passage."

15-41-201, 15-41-202. [Repealed.]

Publisher's Notes. These sections, concerning game wardens generally and deputy game wardens, were repealed by Acts 1999, No. 1557, §§ 7, 8. The sections were derived from the following sources:

15-41-201. Acts 1917, No. 133, § 12; 1919, No. 276, § 2; 1927, No. 160, §§ 13,

14; C. & M. Dig., § 4767; Pope's Dig., §§ 5851, 5852; A.S.A. 1947, §§ 47-119, 47-121, 47-122.

15-41-202. Acts 1927, No. 160, § 15; Pope's Dig., § 5898; A.S.A. 1947, § 47-120.

15-41-203. Authorized searches.

Any game warden or other officer having authority to enforce the game laws of this state is authorized to proceed according to law to search any person, railroad train, boat, place of business, or any other public carrier to ascertain whether or not the game and fish laws are being violated.

History. Acts 1943, No. 146, § 9; A.S.A. 1947, § 47-502.

CASE NOTES

Search in Connection with Arrest.

Game and Fish officers are empowered to make arrests for violation of the game and fish laws and in making such arrests, those officers may also conduct a search of

the person or property of the accused, including his vehicle, in accordance with ARCrP 12. State v. Henry, 304 Ark. 339, 802 S.W.2d 448 (1991).

15-41-204 — 15-41-208. [Repealed.]

Publisher's Notes. Former §§ 15-41-204 — 15-41-208, concerning arrest and prosecution, failure to arrest, confiscation of game and fish, and sale and disposal of contraband equipment, were repealed by Acts 1999, No. 1557, §§ 9-13. The sections were derived from the following sources:

15-41-204. Acts 1917, No. 133, §§ 65, 66; C. & M. Dig., §§ 4811, 4813; Pope's Dig., §§ 5912, 5914; A.S.A. 1947, §§ 47-518, 47-520.

15-41-205. Acts 1943, No. 146, § 9; A.S.A. 1947, § 47-502.

15-41-206. Acts 1917, No. 133, § 60; 1919, No. 276, § 21; C. & M. Dig., § 4769; Pope's Dig., § 5854; A.S.A. 1947, § 47-523.

15-41-207. Acts 1943, No. 146, § 9; A.S.A. 1947, § 47-502.

15-41-208. Acts 1943, No. 146, § 9; A.S.A. 1947, § 47-502.

15-41-209. Fines, fees, and costs.

(a) All fines assessed against and collected from persons convicted for infractions of any of the state laws protecting game, fish, fur-bearing animals, or fresh water mussels shall be paid to the county treasurer or

the municipal court clerk of the county wherein the fine is assessed and forwarded, as provided, to the Arkansas State Game and Fish Commission.

(b)(1) The county treasurer or municipal court clerk shall give his or her receipt to any person paying the fine or to any officer of the court making settlement of fines collected.

(2)(A) At the end of each four (4) months, in April, August, and December, county treasurers or municipal court clerks shall file a report and forward all fines collected under the provisions of this chapter to the commission.

(B) The report, filed on forms provided by the commission, shall include:

- (i) The name of each defendant;
- (ii) The court case number;
- (iii) The name of the arresting officer; and
- (iv) The amount of the fine.

(c) The commission shall, upon receipt thereof, deposit the same with the Treasurer of State who shall deposit the moneys as special revenues in the Game Protection Fund.

(d) All or any portion of the fine moneys deposited as special revenues in the fund may be expended by the commission in the form of grants issued to the Department of Education for fish and wildlife conservation education and other purposes consistent with Arkansas Constitution, Amendment 35.

(e)(1) The commission shall file a written report no later than October 1 of each even-numbered year with the Legislative Council and the Joint Budget Committee indicating the amount of fines deposited into the fund during the prior two (2) fiscal years and the amount of those funds transferred to the department under subsection (d) of this section.

(2) If all of the fine moneys were not transferred to the department, the commission shall include in its report an explanation as to why all funds were not transferred.

History. Acts 1927, No. 160, §§ 2, 14; Pope's Dig., §§ 5852, 5918; A.S.A. 1947, §§ 47-121, 47-522; Acts 1995, No. 232, § 7; 2003, No. 799, § 1.

A.C.R.C. Notes. The operation of this section may be affected by the enactment of Acts 1995, No. 1256.

15-41-210, 15-41-211. [Repealed.]

Publisher's Notes. These sections, concerning the consequences of unpaid fines and costs and the penalty for violations not specifically named in 1917 law, were repealed by Acts 1999, No. 1557, §§ 14, 15. The sections were derived from the following sources:

15-41-210. Acts 1917, No. 133, § 14; C. & M. Dig., § 4806; Pope's Dig., § 5907; A.S.A. 1947, § 47-521.

15-41-211. Acts 1917, No. 133, § 62; C. & M. Dig., § 4810; Pope's Dig., § 5911; A.S.A. 1947, § 47-524.

SUBCHAPTER 3 — ARKANSAS HUNTING HERITAGE PROTECTION ACT

SECTION.

15-41-301. Title.

15-41-302. Findings.

SECTION.

15-41-303. Definitions.

15-41-304. Recreational hunting.

15-41-301. Title.

This subchapter shall be known and may be cited as the “Arkansas Hunting Heritage Protection Act”.

History. Acts 2005, No. 1377, § 1.

15-41-302. Findings.

The General Assembly finds that:

(1) Recreational hunting is an important and traditional recreational activity in which some fourteen million (14,000,000) Americans sixteen (16) years of age and older participate;

(2) Hunters have been and continue to be among the foremost supporters of sound wildlife management and conservation practices in the United States;

(3) Persons who hunt and hunting-related organizations provide direct assistance to wildlife managers and enforcement officers of federal, state, and local governments;

(4) Purchases of hunting licenses, permits, and stamps and payment of excise taxes on goods used by hunters have generated billions of dollars for wildlife conservation, research, and management;

(5) Recreational hunting is an essential component of effective wildlife management, in that it is an important tool for reducing conflicts between people and wildlife and provides incentives for the conservation of wildlife, habitats, and ecosystems on which wildlife depend; and

(6) Recreational hunting is an environmentally acceptable activity that occurs and can be provided on state public lands without adverse effects on other uses of that land.

History. Acts 2005, No. 1377, § 1.

15-41-303. Definitions.

As used in this subchapter:

(1) “Commission” means the Arkansas State Game and Fish Commission;

(2) “Commission-managed lands” means those lands:

(A) That the commission owns; and

(B) Over which the commission holds management authority; and

(3) “Hunting” means the lawful pursuit, trapping, shooting, capture, collection, or killing of wildlife or the attempt to pursue, trap, shoot, capture, collect, or kill wildlife.

History. Acts 2005, No. 1377, § 1.

15-41-304. Recreational hunting.

(a) Subject to valid existing rights, commission-managed lands shall be open to access and use for recreational hunting except as limited by the Arkansas State Game and Fish Commission for reasons of public safety or homeland security or as otherwise limited by law.

(b)(1) The commission shall exercise its authority consistent with subsection (a) of this section in a manner to support, promote, and enhance recreational hunting opportunities to the extent authorized by law.

(2) The commission is not required to give preference to hunting over other uses of commission-managed lands or over land or water management priorities established by state law.

(c)(1) To the greatest practicable extent, commission land management decisions and actions may not result in any net loss of land acreage available for hunting opportunities on commission-managed lands that exists on August 12, 2005.

(2) This subchapter does not apply to commission-owned lands under contract to private persons or entities.

(d) On or before October 1 of each year, the commission shall submit to the House and Senate cochairs of the Legislative Council a written report describing:

(1) The acreage administered by the commission that has been closed during the previous year to recreational hunting and the reasons for the closures; and

(2) The acreage administered by the commission that was opened to recreational hunting to compensate for the acreage that was closed during the previous year.

(e) This subchapter does not compel the opening to recreational hunting of national parks or national monuments administered by the National Park Service.

History. Acts 2005, No. 1377, § 1.

CHAPTER 42

LICENSES

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. FUR-TAKERS AND DEALERS. [REPEALED.]
3. HUNTING DOGS.

A.C.R.C. Notes. References to “this chapter” in subchapters 1 and 3 may not apply to §§ 15-42-104, 15-42-105, 15-42-110, and 15-42-126 which were enacted subsequently.

Publisher’s Notes. Acts 1943, No. 146, § 20 provided that nothing in the act

should repeal, amend, alter, or change any preexisting acts.

Preambles. Acts 1943, No. 146 contained a preamble which read: “Whereas, the Game and Fish Commission has been heretofore created and its duties prescribed by law; and

"Whereas, many of the laws pertaining to game and fish and enforcements of said laws for their protection are contained in acts of the legislature running back many years; and

"Whereas, many justices of the peace

and other enforcement officers do not have all the acts of Arkansas containing these laws;

"Now, therefore, the game and fish laws should be codified and this bill is offered in that purpose...."

RESEARCH REFERENCES

Am. Jur. 35 Am. Jur. 2d, Fish & G., § 45.

C.J.S. 36A C.J.S., Fish, § 36.
38 C.J.S., Game, § 15.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 15-42-101. Penalty for hunting or fishing without license.
- 15-42-102. [Repealed.]
- 15-42-103. [Repealed.]
- 15-42-104. Hunting and fishing licenses for residents — Special fees.
- 15-42-105. Free or discounted licenses.
- 15-42-106. Resident fishing license — Requirement.
- 15-42-107. Nonresident fishing license generally.
- 15-42-108. Nonresident three-day fishing license.
- 15-42-109. [Repealed.]

SECTION.

- 15-42-110. Three-day fishing license.
- 15-42-111 — 15-42-121. [Repealed.]
- 15-42-122. Limitation on issuance of hunting or fishing licenses in neighboring states.
- 15-42-123. Free hunting and fishing licenses for residents on active military duty.
- 15-42-124. Use of fees collected.
- 15-42-125. Beaver control fund — Development of public hunting and fishing areas.
- 15-42-126. Reciprocity agreements — Nonresidents over 65.
- 15-42-127. Implied consent.

A.C.R.C. Notes. References to "this subchapter" in §§ 15-42-101, 15-42-106 — 15-42-108, and 15-42-122 — 15-42-125 may not apply to §§ 15-42-104, 15-42-105, 15-42-110, 15-42-126, and 15-42-127 which were enacted subsequently.

Publisher's Notes. Acts 1915, No. 124, § 24, provided that the Act was intended to be supplemental.

Cross References. Resident hunting and fishing license not to exceed \$1.50 each unless higher fee authorized by legislature, Ark. Const., Amend. 35, § 8.

Preambles. Acts 1969, No. 104 contained a preamble which read: "Whereas, many Arkansas residents are on active duty in the armed services of the United States and have an opportunity to hunt and fish in Arkansas only a few days during each year; and

"Whereas, it is believed that it would be appropriate for the State of Arkansas to

provide such Arkansas residents free hunting and fishing licenses as a token of appreciation to such military personnel for their many contributions to the peace and safety of our State and Country.

"Now therefore...."

Acts 1987, No. 910 contained a preamble which read: "Whereas, Amendment No. 35 to the Arkansas Constitution established the Arkansas Game and Fish Commission and vested in said Commission broad authority over the control, management, restoration, conservation, and regulation of birds, fish, game, and wildlife resources of the State; and

"Whereas, Amendment No. 35 specifically provides that the 'resident hunting and fishing license, each, shall be One and 50/100 Dollars annually, and shall not exceed this amount unless a higher license fee is authorized by an Act of the Legislature'; and

"Whereas, the General Assembly is cognizant of the intent of Amendment No. 35 that the Game and Fish commission shall have the exclusive power and authority to issue licenses and permits, to regulate bag limits, and the manner of taking game and fish and fur-bearing animals, and shall have the authority to divide the State into zones and regulate seasons and the manner of taking game and fish and fur-bearing animals therein and to fix penalties for violations, but further recognizes the intent of the people of this state that the maximum annual resident hunting and fishing license fees that may be charged by the Commission shall not exceed the amounts therefor authorized by an Act of the Legislature; and

"Whereas, it is the intent and purpose of this Act for the General Assembly to carry out its constitutional responsibility to establish the maximum annual resident hunting and fishing license fees or permit fees that may be charged residents of this State by the Game and Fish Commission, pursuant to the authority of Amendment No. 35 to the Arkansas Constitution;

"Now therefore"

Effective Dates. Acts 1915, No. 124, § 24: approved Mar. 11, 1915. Emergency clause provided: "This Act being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in force from and after its passage."

Acts 1917, No. 133, § 67: approved Feb. 23, 1917. Emergency clause provided: "This act, being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in force from and after its passage."

Acts 1937, No. 316, § 4: Mar. 25, 1937.

Acts 1963, No. 532, § 3: Mar. 22, 1963. Emergency clause provided: "It is hereby found and determined by the General Assembly that under present law a person must have paid a poll tax as a condition of obtaining a license as a fishing guide; that no similar requirement is required with respect to the licensing of other occupations and vocations in this state; that such requirement in the fishing guide licensing law is working a severe hardship on persons desiring to obtain a license as a fishing guide and that such requirement has no relationship to the occupation licensed. Therefore, an emergency is hereby declared to exist and this act being neces-

sary to the immediate preservation of the public peace, health and safety shall be in effect from the date of its passage and approval."

Acts 1977, No. 430, § 6: Mar. 16, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Game and Fish Commission is in need of additional monies to provide for fish and wildlife conservation, management, and restoration in this state, and that the immediate passage of this act is necessary in order to enable said Commission to commence collecting the increased fee for the annual resident hunting license on July 1, 1977, and thereafter, and that the immediate passage of this act is necessary to accomplish this purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 133, § 4: became law without Governor's signature, Feb. 15, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that a strong economy is essential to employment and the economic welfare of the citizens of this State; that a number of business establishments in the State of Arkansas, especially in areas adjoining other states, engaged in the sale of sporting goods, equipment, and bait are suffering substantial financial losses of business going to firms in other states as a result of regulations of this State which permit the issuance in adjoining states of Arkansas hunting and fishing licenses, while other states deny the same opportunities and privileges to business firms in Arkansas to sell hunting and fishing licenses of their respective states; and that the immediate passage of this Act is necessary to prohibit the issuance of hunting and fishing licenses by business establishments in other states in those circumstances where the adjoining state does not provide similar opportunities for Arkansas business firms to issue hunting and fishing licenses of their respective states, and further that the immediate passage of this Act is necessary to correct this situation and thereby improve employment and income opportunities to citizens of this State. Therefore, an emergency is hereby declared to exist, and this Act,

being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 392, § 4: Mar. 13, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that many of the tourists who visit Arkansas each year are here for only a few days; that many of such tourists who would not otherwise purchase a fishing license would do so if they could purchase a short term license for a small fee; that some residents of the State go fishing only once each year and should be permitted to purchase a short term license rather than an annual license; that the issuance of three-day fishing licenses would not only be beneficial to the purchasers of such licenses but would also promote the growth of tourist trade in Arkansas and thereby benefit the overall economy of the State; that this Act should be given effect immediately to enable the Game and Fish Commission adequate time to adopt appropriate regulations and to cause the three-day fishing license forms to be printed in time to comply with the provisions of this Act. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 910, § 9: Apr. 13, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that Amendment No. 35 to the Arkansas Constitution requires the General Assembly to establish the maximum annual resident hunting and fishing license fees that may be charged by the Game and Fish Commission; that the immediate passage of this Act is necessary to establish an up-to-date schedule of authorized maximum resident hunting and fishing license fees, in order to enable the Game and Fish Commission to efficiently operate the game and fish program. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 939, § 19: July 1, 1987. Emergency clause provided: "It is hereby found and determined by the Seventy-

Sixth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1987 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1987 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1987."

Acts 1987 (1st Ex. Sess.), No. 1, § 4: June 10, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that: (a) Amendment No. 35 to the Constitution of the State of Arkansas provides that the General Assembly shall establish the maximum fees that may be charged by the Game and Fish Commission for a resident of this State to obtain an annual resident hunting or fishing license; that at the time of the adoption of Amendment No. 35 the resident hunting license included the authority of residents of this State to take deer during hunting seasons; that recently the Game and Fish Commission proposed to adopt regulations requiring residents of this State to pay a special fee, in addition to obtaining a regular hunting license, for the privilege of hunting deer in this State; and that it is the consensus of the General Assembly that the people of this State, by the adoption of Amendment No. 35, intended resident hunting licenses to include the taking of deer by residents of this State, within the bag limits established by the Game and Fish Commission, and that the immediate passage of this Act is necessary to clarify such intent; (b) that subsection (A) of Section 1 of Act 910 of 1987 will need clarification to be compatible to the provisions of Section 2 of this Act; and (c) that Section 13 of Act 939 of 1987 provided that the provisions of said Act are not severable, and that if any provision of said Act is declared invalid for any reason that all provisions of such Act shall also be invalid; that Act 939 of 1987 contains the biennial appropriation for

the support of the Arkansas Game and Fish Commission and it is essential that said appropriation be provided for the support of said Commission, to be effective with the commencement of the fiscal year beginning July 1, 1987, and that in the event a court of competent jurisdiction were to determine any provision of said Act to be unconstitutional, said decision would nullify the entire Act, including the biennial appropriation for the support of the Game and Fish Commission, which is hereby declared not to be the intent of the General Assembly; and that the immediate passage of this Act is necessary to repeal such non-severable clause, thereby declaring the provisions of Act 939 of 1987 to be severable in the same manner as provided in Section 1 of Act 92 of 1973 (Ark. Stats. 1-209). Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 219, § 5: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Game and Fish Commission is in urgent need of additional funds to enable it to carry out its constitutional responsibilities with respect to the control, management, restoration, conservation and regulation of the game, fish, birds and wildlife resources of the state; that this act is designed to provide such essential funds by prescribing and limiting fees which may be

charged residents for hunting and fishing in the state; that the various hunting licenses and permits expire June 30, 1989 and hunting licenses and permits for the 1989-90 hunting season are sold beginning in July 1989; and that it is essential to the effective and efficient administration of the provisions of this act that it take effect on July 1, 1989. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1989."

Acts 1995, No. 369, § 7: Feb. 20, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that Amendment Number 35 to the Arkansas Constitution requires the General Assembly to establish the maximum annual resident hunting and fishing license fees that may be charged by the Arkansas Game and Fish Commission; that Amendment 35 to the Arkansas Constitution requires all fees, monies, or funds arising from all sources by the operation and transaction of the Arkansas Game and Fish Commission to be deposited in the Game Protection Fund in the State Treasury; and that the immediate passage of this Act is necessary to enable the Arkansas Game and Fish Commission to efficiently operate the game and fish program. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

CASE NOTES

ANALYSIS

Constitutionality.

Resident and Nonresident Fees.

Constitutionality.

Prior law prescribing different license fees for residents and nonresidents which defined "residents" as those "who possess the qualifications of a legal voter" held void as an improper classification which

would prevent those under the required age from obtaining a license. *State v. Johnson*, 172 Ark. 866, 291 S.W. 89 (1927) (decision under prior law).

Resident and Nonresident Fees.

Legislature has authority to prescribe different license fees for residents and nonresidents. *State v. Johnson*, 172 Ark. 866, 291 S.W. 89 (1927) (decision under prior law).

15-42-101. Penalty for hunting or fishing without license.

Any resident of this state who is required to have a license to hunt or fish and who shall be guilty of hunting or fishing in this state without first having obtained a hunting or fishing license shall be guilty of a misdemeanor and upon conviction shall be fined in any sum of not less than ten dollars (\$10.00) nor more than two hundred dollars (\$200).

History. Acts 1957, No. 190, § 3; A.S.A. 1947, § 47-219.

15-42-102. [Repealed.]

Publisher's Notes. This section, concerning violations disclosures, was repealed by Acts 1999, No. 1557, § 16. The

section was derived from Acts 1915, No. 124, § 8; C. & M. Dig., § 4783; Pope's Dig., § 5870; A.S.A. 1947, § 47-215.

15-42-103. [Repealed.]

Publisher's Notes. This section, concerning the effect of a license during the closed season, was repealed by Acts 1999, No. 1557, § 17. This section was derived

from Acts 1917, No. 133, § 28, p.695; C. & M. Dig., § 4782; Pope's Dig., § 5869; A.S.A. 1947, § 47-213.

15-42-104. Hunting and fishing licenses for residents — Special fees.

(a)(1) The maximum fee for the annual resident basic hunting license for any resident of the State of Arkansas who is sixteen (16) years of age or older for the privilege of taking small game and the taking of one (1) deer by the use of a modern center-fire firearm shall be as provided by the regulations and within the bag limits promulgated by the Arkansas State Game and Fish Commission but shall not exceed eleven dollars and fifty cents (\$11.50) each until July 1, 1997, when the maximum fee shall revert to ten dollars and fifty cents (\$10.50).

(2) The maximum fee for the annual resident sportsman hunting license for any resident of the State of Arkansas who is sixteen (16) years of age or older for the privilege of taking three (3) deer and all other game by any method of taking shall be as provided by the regulations and within the bag limits promulgated by the commission but shall not exceed twenty-six dollars (\$26.00) each until July 1, 1997, when the maximum fee shall revert to twenty-five dollars (\$25.00) each.

(3) In addition to the annual resident basic and sportsman hunting license fees authorized in this subsection, the commission by regulation may provide that any resident of this state who is sixteen (16) years of age or older be required:

(A) For the privilege of hunting migratory birds in this state, to obtain a special permit and pay a special annual fee not to exceed seven dollars (\$7.00) each;

(B) For the privilege of taking a bonus deer in addition to the deer authorized with the basic hunting license and the sportsman hunting

license, to obtain a special permit and pay a special fee not to exceed ten dollars (\$10.00) each; and

(C) For the privilege of hunting elk in this state, to obtain a special permit and pay a special annual fee not to exceed thirty-five dollars (\$35.00) each.

(4) Nothing contained herein is intended to restrict the authority of the commission to charge any resident of the state an additional fee solely for the purpose of entering upon and hunting upon any land owned or leased by the commission.

(b)(1) The maximum fee for the annual resident fishing license for any resident of the State of Arkansas who is sixteen (16) years of age or older shall be as provided by the regulations promulgated by the commission but shall not exceed eleven dollars and fifty cents (\$11.50) each until July 1, 1997, when the maximum fee shall revert to ten dollars and fifty cents (\$10.50) each.

(2) In addition to the annual resident fishing license fee authorized in this subsection, the commission by regulation may provide that any resident of this state sixteen (16) years of age or older be required for the privilege of fishing for trout in this state to obtain a special permit and pay a special annual fee not to exceed five dollars (\$5.00).

(3) In lieu of the annual resident fishing license fee authorized in this subsection, the commission by regulation may provide that any resident of this state sixteen (16) years of age or older be authorized to purchase a three-day-trip fishing license for a fee not to exceed seven dollars and fifty cents (\$7.50) each until July 1, 1997, when the maximum fee shall revert to six dollars and fifty cents (\$6.50) each.

(c) The maximum fee for the annual resident combination sportsman hunting and fishing license for any resident of the State of Arkansas who is sixteen (16) years of age or older for all hunting and fishing privileges except those covered by the migratory bird and trout permits shall be as provided by the regulations and within the bag limits as promulgated by the commission but shall not exceed thirty-seven dollars and fifty cents (\$37.50) each until July 1, 1997, when the maximum fee shall revert to thirty-five dollars and fifty cents (\$35.50).

(d)(1) The commission:

(A) Shall provide for the issuance of a lifetime hunting and fishing license, with an optional lifetime trout stamp and lifetime state duck stamp, to a resident of this state who is:

(i) Sixty-five (65) years of age or older for a one-time fee of thirty-five dollars and fifty cents (\$35.50);

(ii) A totally disabled military veteran for a one-time fee of thirty-five dollars and fifty cents (\$35.50); or

(iii) Any age for a one-time fee of one thousand dollars (\$1,000); and

(B) May provide for the issuance of a lifetime hunting-only license or a lifetime fishing-only license for a fee that shall not exceed the fee that the resident would be charged otherwise for the issuance of a lifetime license under subdivision (d)(1)(A) of this section.

(2) The commission shall offer a resident issued a lifetime hunting and fishing license under subdivision (d)(1)(A) of this section or a hunting-only license or a fishing-only license under subdivision (d)(1)(B) of this section:

(A) A lifetime trout stamp for a one-time fee of five dollars (\$5.00);

(B) A lifetime state duck stamp for a one-time fee of seven dollars (\$7.00); or

(C) Both a lifetime trout stamp and a lifetime state duck stamp for a one-time fee of twelve dollars (\$12.00).

(3) The commission:

(A) Shall provide for the issuance of a three-year disabled hunting and fishing license to a resident of this state who is totally disabled for a fee of thirty-five dollars and fifty cents (\$35.50); and

(B) May provide for the issuance of a hunting-only license or a fishing-only license to a resident of this state who is totally disabled for a fee that shall not exceed thirty-five dollars and fifty cents (\$35.50).

(e) For this section, the commission may promulgate rules that:

(1) Define “military veteran”, “resident”, and “totally disabled”; and

(2) Govern the sale and use of each license, permit, or stamp issued under this section.

History. Acts 1987, No. 910, §§ 1-4; 1987, No. 939, § 18; 1987 (1st Ex. Sess.), No. 1, §§ 2, 3; 1989, No. 49, § 1; 1989, No. 219, § 1; 1995, No. 369, § 1; 1999, No. 987, § 1; 2003, No. 428, § 1; 2009, No. 623, § 1.

A.C.R.C. Notes. Former § 15-42-104, which concerned permanent hunting or fishing licenses for residents and fees therefor, is deemed to be superseded by this section. The former § 15-42-104 was derived from Acts 1965, No. 182, § 1; 1973, No. 468, § 1; 1975, No. 1006, § 1; 1977, No. 430, § 1; 1979, No. 96, §§ 1, 2; 1979, No. 203, § 1; 1983, No. 40, § 1; A.S.A. 1947, §§ 47-221 — 47-221.2.

References to “this chapter” in §§ 15-42-101, 15-42-106 — 15-42-108, and 15-42-122 — 15-42-125 and subchapter 2 may not apply to this section, which was enacted subsequently.

References to “this subchapter” in §§ 15-42-101, 15-42-106 — 15-42-108, and 15-42-122 — 15-42-125 may not apply to this section which was enacted subsequently.

Acts 1987, No. 910, § 6, provided: “The establishment of the maximum annual fees that may be charged by the Game and Fish Commission for resident hunting and fishing licenses under the provisions of

this Act shall not be deemed to modify, repeal or affect the exclusive power and authority granted to the Game and Fish Commission under Amendment No. 35 to the Arkansas Constitution to issue licenses and permits, to regulate bag limits and the manner of taking game, fish, and fur-bearing animals, and the authority to divide the State into zones and to regulate seasons and the manner of taking game and fish and fur-bearing animals therein, and fix penalties for violations thereof.

“The primary purpose of this Act is to establish, by an Act of the Legislature, the maximum annual resident hunting and fishing license fees that may be charged by the Game and Fish Commission, as required by Amendment No. 35 to the Arkansas Constitution. Provided that, the maximum annual resident hunting and fishing license fees as authorized in this Act shall be the only license or permit fees that the Game and Fish Commission may charge a resident for the privilege of hunting and fishing in this State, and the Game and Fish Commission shall have no authority to establish a special permit fee for the privilege of hunting and fishing by a resident of this State other than as provided in this Act.

“Resident commercial hunting and fishing licenses, each, shall not exceed the

amounts that were in effect for each such license or permit under regulations of the Game and Fish Commission in effect on June 30, 1986, unless a higher license fee

is authorized by an Act of the Legislature.”

Amendments. The 2009 amendment rewrote (d) and (e).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Natural Resources, Hunting and

Fishing Licenses for Seniors, 26 U. Ark. Little Rock L. Rev. 438.

CASE NOTES

Constitutionality.

Former section providing for the issue of a license without charge to persons over

65 held unconstitutional. *Smith v. McNair*, 231 Ark. 49, 328 S.W.2d 262 (1959) (decision under prior law).

15-42-105. Free or discounted licenses.

The Arkansas State Game and Fish Commission shall not issue a free or discounted hunting or fishing license to any person except as is specifically authorized or directed by law.

History. Acts 1989, No. 219, § 2.

A.C.R.C. Notes. A former § 15-42-105, which concerned failure or refusal to issue residential hunting or fishing licenses, was deemed to be superseded by the version of this section enacted in 1987 (now repealed). That former § 15-42-105 was derived from Acts 1975, No. 1006, § 3; A.S.A. 1947, § 47-223.1.

References to “this chapter” in §§ 15-42-101, 15-42-106 — 15-42-108, and 15-42-122 — 15-42-125 may not apply to this

section, which was enacted subsequently.

References to “this subchapter” in §§ 15-42-101, 15-42-106 — 15-42-108, and 15-42-122 — 15-42-125 may not apply to this section which was enacted subsequently.

Publisher’s Notes. Former § 15-42-105, concerning complimentary licenses, was repealed by Acts 1989, No. 219, § 4. The former section was derived from Acts 1987, No. 910, § 5; 1987, No. 939, § 18.

15-42-106. Resident fishing license — Requirement.

(a) It shall be unlawful for any resident person to take or attempt to take fish by means of artificial bait or lures in this state without first procuring an annual resident fishing license.

(b) It shall also be unlawful for any person more than sixteen (16) years of age who is a resident of this state to take or attempt to take fish by means of net seines or gigs without first procuring a resident fishing license.

History. Acts 1943, No. 146, § 11; 1963, No. 532, § 1; A.S.A. 1947, § 47-208.

15-42-107. Nonresident fishing license generally.

(a)(1) It shall be unlawful for any nonresident person to take or attempt to take fish in this state in any manner without first procuring a nonresident fishing license.

(2) The nonresident annual fishing license fee shall be five dollars (\$5.00).

(b) Any person violating any of the provisions of subdivision (a)(1) of this section shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00).

History. Acts 1943, No. 146, § 11; 1963, No. 532, § 1; A.S.A. 1947, § 47-208.

CASE NOTES

Commercial Fisherman.

A license obtained under this section affords no protection to commercial fish-

ermen. *Anderson v. State*, 213 Ark. 871, 213 S.W.2d 615 (1948).

15-42-108. Nonresident three-day fishing license.

(a) The Arkansas State Game and Fish Commission shall issue or cause to be issued a three-day fishing license to any nonresident of the state upon application therefor and the payment of a fee of three dollars and fifty cents (\$3.50).

(b) The commission is authorized to adopt and enforce any rules and regulations it deems necessary or appropriate to carry out the purposes of this section.

History. Acts 1979, No. 392, §§ 1, 2; A.S.A. 1947, §§ 47-208.1, 47-208.2.

15-42-109. [Repealed.]

Publisher's Notes. This section, concerning resident hunting licenses, was repealed by Acts 1999, No. 1557, § 18. The section was derived from Acts 1927, No.

160, § 19; Pope's Dig., § 5858; Acts 1937, No. 316, § 1; 1943, No. 146, § 8; A.S.A. 1947, §§ 47-201, 47-209.

15-42-110. Three-day fishing license.

The maximum fee for a three-day fishing license for any resident in the State of Arkansas who is sixteen (16) years of age or older but less than sixty-five (65) years of age shall not exceed six dollars and fifty cents (\$6.50) each.

History. Acts 1987, No. 910, § 2; 1987, No. 939, § 18.

A.C.R.C. Notes. Former § 15-42-110, which concerned fees and effective dates for annual and three-day residential hunting or fishing licenses, is deemed to be superseded by this section. The former § 15-42-110 was derived from Acts 1983, No. 343, §§ 1, 2; A.S.A. 1947, §§ 47-221.3, 47-221.4.

References to "this chapter" in §§ 15-42-101, 15-42-106 — 15-42-108, and 15-42-122 — 15-42-125 and subchapter 3 may not apply to this section, which was enacted subsequently.

References to "this subchapter" in §§ 15-42-101, 15-42-106 — 15-42-108, and 15-42-122 — 15-42-125 may not apply to this section which was enacted subsequently.

Publisher's Notes. As to legislative intent of Acts 1987, No. 910, see A.C.R.C. Notes, § 15-42-104.

15-42-111 — 15-42-121. [Repealed.]

Publisher's Notes. Former §§ 15-42-111 — 15-42-121, concerning a nonresident hunting license fee, club licenses, fishing and hunting guide's license, license application and issuance, hunting and fishing licenses form, display, and signature, prohibition on license alterations, expiration dates of certain licenses, persons ineligible for hunting licenses and their investigation and prosecution, were repealed by Acts 1999, No. 1557, §§ 19-29. The sections were derived from the following sources:

15-42-111. Acts 1943, No. 146, § 8; A.S.A. 1947, § 47-201.

15-42-112. Acts 1943, No. 146, § 8; A.S.A. 1947, § 47-201.

15-42-113. Acts 1943, No. 146, § 8; A.S.A. 1947, § 47-201.

15-42-114. Acts 1943, No. 146, § 9; A.S.A. 1947, § 47-502.

15-42-115. Acts 1943, No. 146, § 9; A.S.A. 1947, § 47-502.

15-42-116. Acts 1917, No. 133, § 18, p. 695; C. & M. Dig., § 4774; Acts 1937, No. 316, § 2; Pope's Dig., § 5859; A.S.A. 1947, § 47-210.

15-42-117. Acts 1943, No. 146, § 11; A.S.A. 1947, § 47-208.

15-42-118. Acts 1927, No. 160, § 24; Pope's Dig., § 5866; A.S.A. 1947, § 47-212.

15-42-119. Acts 1943, No. 146, § 9; A.S.A. 1947, § 47-502.

15-42-120. Acts 1927, No. 160, § 19; 1937, No. 316, § 1; Pope's Dig., § 5858; A.S.A. 1947, § 47-209.

15-42-121. Acts 1915, No. 124, §§ 5, 9; p. 464; C. & M. Dig., §§ 4771, 4812; Pope's Dig., §§ 5856, 5913; A.S.A. 1947, §§ 47-214, 47-519.

15-42-122. Limitation on issuance of hunting or fishing licenses in neighboring states.

(a) It shall be unlawful for the Arkansas State Game and Fish Commission or any employee thereof to issue a permit to any person, firm, or corporation for the issuance in a state bordering Arkansas of any Arkansas resident or nonresident hunting and fishing license, unless the state bordering Arkansas in which the place of business of the person is located authorizes Arkansas persons, firms, or corporations to obtain permits to issue resident or nonresident hunting and fishing licenses of the adjoining state from a place of business in Arkansas.

(b) Any person knowingly or willfully violating the provisions of this section shall be guilty of a Class A misdemeanor and shall be punished accordingly. In addition, if the person is an officer or employee of the State of Arkansas or any agency thereof, the person shall be removed from office or dismissed from employment and shall not be eligible for reemployment or election or appointment to any office in this state for a period of three (3) years thereafter.

History. Acts 1979, No. 133, §§ 1, 2; A.S.A. 1947, §§ 47-209.1, 47-209.2.

15-42-123. Free hunting and fishing licenses for residents on active military duty.

(a) Every resident of this state who is on active duty in the armed services of the United States and who was a resident of Arkansas at the time that he or she entered the armed services, whether stationed in Arkansas or elsewhere, shall be entitled to receive without charge a license to hunt and a license to fish in this state, upon making application therefor in the manner provided in this section. However, no such license shall be issued to any member of the National Guard unless the National Guard has been mobilized.

(b) Any person who is entitled to obtain a free license to hunt or fish under the provisions of this section may obtain the license by making application to the Arkansas State Game and Fish Commission and furnishing such information as the commission may require concerning the eligibility of the applicant to receive a free license.

(c) Every hunting or fishing license issued without charge pursuant to the provisions of this section shall be in the same form and contain the same information as other licenses issued by the commission, and other information the commission may require, and in addition thereto shall be plainly stamped "MILITARY PERSONNEL". Licenses so issued shall expire on the same dates as other hunting and fishing licenses issued by the commission.

(d) The commission is authorized to promulgate such rules and regulations as it may deem appropriate to properly carry out the purpose and intent of this section.

History. Acts 1969, No. 104, §§ 1-4;
A.S.A. 1947, §§ 47-224 — 47-227.

15-42-124. Use of fees collected.

(a) All funds derived by the Arkansas State Game and Fish Commission under the provisions of this section and § 15-42-104(a)-(c) shall be deposited in the State Treasury, and the Treasurer of State shall credit the funds to the Game Protection Fund.

(b) Of the amount so deposited in the State Treasury, the Arkansas State Game and Fish Commission shall annually spend the moneys in accordance with the provisions of the appropriation acts of the legislature.

History. Acts 1965, No. 182, § 2; A.S.A. 1947, § 47-222. **ence to 15-42-104(a)-(c), see notes to section 15-42-104.**

Publisher's Notes. Concerning refer-

15-42-125. Beaver control fund — Development of public hunting and fishing areas.

(a) Twenty-five cents (25¢) of the additional fee derived from the sale of each annual resident hunting license shall be set aside by the Arkansas State Game and Fish Commission into a special account

within the Game Protection Fund to be known as the "Beaver Control and Eradication Account" to be used solely and exclusively for the control and eradication of beavers in this state which are destroying private property.

(b) Fifty percent (50%) of all remaining funds derived from the increase in resident hunting and fishing licenses provided for in § 15-42-104(a)-(c) shall be expended by the Arkansas State Game and Fish Commission exclusively for the acquisition and development of public hunting and fishing areas.

History. Acts 1977, No. 430, § 3; A.S.A. 1947, § 47-222.1.

ence to 15-42-104(a)-(c), see notes to section 15-42-104.

Publisher's Notes. Concerning refer-

15-42-126. Reciprocity agreements — Nonresidents over 65.

(a) Any nonresident, sixty-five (65) years of age or older, whose home state does not require nonresident fishing or hunting licenses for persons sixty-five (65) years of age and older, shall not be required to purchase a nonresident fishing or hunting license to lawfully hunt or fish in this state, provided that person possesses a valid hunting or fishing license issued by his or her home state for the species of fish or game he or she is attempting to take.

(b) The Arkansas State Game and Fish Commission is authorized to enter into reciprocity agreements with other states and issue necessary rules and regulations for the implementation of this section.

History. Acts 1991, No. 282, § 1.

A.C.R.C. Notes. References to "this chapter" in §§ 15-42-101, 15-42-106 — 15-42-108, and 15-42-122 — 15-42-125 and subchapter 3 may not apply to this section which was enacted subsequently.

References to "this subchapter" in §§ 15-42-101, 15-42-106 — 15-42-108, and 15-42-122 — 15-42-125 may not apply to this section which was enacted subsequently.

15-42-127. Implied consent.

(a)(1) Subject to the provisions of subsection (c) of this section, any person who purchases a hunting license for use in the State of Arkansas or engages in hunting privileges in this state shall be deemed to have given consent to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the alcohol or controlled substance content of his or her blood, breath, or urine if the person is involved in a shooting accident while hunting.

(2) Any person who is dead, unconscious, or otherwise in a condition rendering the person incapable of refusal to submit to a test of his or her blood, breath, or urine shall be deemed not to have withdrawn the consent provided by subdivision (a)(1) of this section, and the test may be administered subject to the provisions of subsection (c) of this section.

(3)(A) When a person who is hunting in this state is involved in a shooting accident resulting in loss of human life or serious bodily

injury, a law enforcement officer shall request and the person or persons shall submit to a chemical test or tests of the person's blood, breath, or urine for the purpose of determining the alcohol or controlled substance content of his or her blood, breath, or urine.

(B) The law enforcement officer shall cause the test or tests to be administered to the person or persons involved in the shooting accident, including the person injured by the shooting and the person who caused the injury by shooting another person.

(b) If a person who is hunting is involved in a shooting accident resulting in loss of human life or serious bodily injury and the person refuses to submit to a chemical test under this section upon the request of the law enforcement officer, the person shall be guilty of a violation for refusal to submit, and upon conviction:

(1) The court shall levy a fine of not less than two thousand five hundred dollars (\$2,500) and not greater than five thousand dollars (\$5,000); and

(2) The Arkansas State Game and Fish Commission may suspend or revoke the person's hunting privileges or eligibility to purchase a hunting license for life.

(c)(1) The chemical tests required under this section shall be administered at the direction of a law enforcement officer having reasonable cause to believe the person to have been hunting while under the influence of alcohol or a controlled substance.

(2)(A) The law enforcement agency by which the officer referred to in subdivision (c)(1) of this section is employed shall designate which tests authorized by this section shall be administered, and the agency shall be responsible for paying all expenses incurred in conducting the tests.

(B) If a person tested under this section requests that additional tests be made as authorized in subsection (g) of this section, the cost of the additional tests shall be borne by the person tested.

(C) If any person objects to the taking of his or her blood for a test as authorized by this section, the breath or urine of the person may be used to make the analysis.

(d)(1) To be considered valid under the provisions of this section, chemical analyses of a person's blood, breath, or urine must be performed according to methods approved by the State Board of Health or by an individual possessing a valid permit issued by the Department of Health for that purpose.

(2) The department is authorized to:

(A) Approve satisfactory techniques or methods for the chemical analysis of a person's blood, breath, or urine;

(B) Ascertain the qualifications and competence of individuals to conduct the analysis; and

(C) Issue permits that shall be subject to termination or revocation at the discretion of the department.

(e)(1) When a person submits to a blood test at the request of a law enforcement officer, blood may be drawn by a physician or by a person acting under the direction and supervision of a physician.

(2) The limitation of subdivision (e)(1) of this section shall not apply to the taking of breath or urine specimens.

(3)(A) No person, institution, or office in this state that withdraws blood for the purpose of determining alcohol or controlled substance content of the blood at the request of a law enforcement officer under this section shall be held liable for violating any of the criminal laws of this state in connection with the withdrawal of blood.

(B) A physician, institution, or person acting under the direction or supervision of a physician shall not be held liable in tort for the withdrawal of the blood unless the person or institution is negligent in connection with the withdrawal of blood or the blood is taken over the objections of the subject.

(f) Upon the request of a person who submits to a chemical test or tests at the request of a law enforcement officer under this section, full information concerning the test or tests shall be made available to the person or the person's attorney.

(g)(1) A person tested may have a physician, qualified technician, registered nurse, or other qualified person of his or her own choice administer a complete chemical test in addition to any test administered at the direction of a law enforcement officer.

(2) The law enforcement officer shall advise the person of this right.

(3) If a law enforcement officer refuses or fails to advise the person of this right and to permit and assist the person to obtain the test, then the results of the test or tests taken at the direction of the law enforcement officer under this section shall not be admissible into evidence.

History. Acts 2005, No. 1983, § 1.

A.C.R.C. Notes. References to "this chapter" in §§ 15-42-101, 15-42-106 — 15-42-108, and 15-42-122 — 15-42-125 and subchapter 3 may not apply to this section which was enacted subsequently.

References to "this subchapter" in §§ 15-42-101, 15-42-106 — 15-42-108, and 15-42-122 — 15-42-125 may not apply to this section which was enacted subsequently.

SUBCHAPTER 2 — FUR-TAKERS AND DEALERS

SECTION.

15-42-201 — 15-42-210. [Repealed.]

15-42-201 — 15-42-210. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 1999, No. 1557, §§ 30-39. The subchapter was derived from the following sources:

15-42-201. Acts 1937, No. 337, § 1; Pope's Dig., § 6001; A.S.A. 1947, § 47-202.

15-42-202. Acts 1937, No. 337, § 7; Pope's Dig., § 6007; A.S.A. 1947, § 47-207.

15-42-203. Acts 1937, No. 337, § 5; Pope's Dig., § 6005; A.S.A. 1947, § 47-205.

15-42-204. Acts 1943, No. 146, § 8; A.S.A. 1947, § 47-201.

15-42-205. Acts 1943, No. 146, § 8; A.S.A. 1947, § 47-201.

15-42-206. Acts 1937, No. 337, §§ 1, 3; 1939, No. 347, § 7; Pope's Dig., §§ 6001, 6003; A.S.A. 1947, §§ 47-202, 47-203.

15-42-207. Acts 1937, No. 337, § 6; Pope's Dig., § 6006; A.S.A. 1947, § 47-206.

15-42-208. Acts 1937, No. 337, § 4; Pope's Dig., § 6004; A.S.A. 1947, § 47-204.

15-42-209. Acts 1943, No. 146, § 7; A.S.A. 1947, § 47-316.

15-42-210. Acts 1943, No. 146, § 7; A.S.A. 1947, § 47-316.

SUBCHAPTER 3 — HUNTING DOGS

SECTION.

15-42-301. [Repealed.]

15-42-302. [Repealed.]

SECTION.

15-42-303. Attempted theft or theft of licensed dogs.

Effective Dates. Acts 1917, No. 133, § 67: approved Feb. 23, 1917. Emergency clause provided: "This act, being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in force from and after its passage."

Acts 1951, No. 380, § 5: effective retroactively to Jan. 1, 1951.

Acts 1975, No. 928, § 1: effective simultaneously with the Arkansas Criminal Code on Jan. 1, 1976.

15-42-301. [Repealed.]

Publisher's Notes. This section, concerning the dog licenses form, was repealed by Acts 1999, No. 1557, § 40. The section was derived from Acts 1917, No.

133, § 25, p. 695; C. & M. Dig., § 4779; Pope's Dig., § 5864; A.S.A. 1947, § 47-211.

15-42-302. [Repealed.]

Publisher's Notes. This section, concerning bird dog licenses, was repealed by Acts 1999, No. 1557, § 41. This section

was derived from Acts 1943, No. 146, § 8; A.S.A. 1947, § 47-201.

15-42-303. Attempted theft or theft of licensed dogs.

(a) It shall be deemed prima facie evidence that an attempt is being made to steal a dog if any person:

(1) Retains in his or her possession or permits to remain on his or her premises for a period of ten (10) or more days any dog that has been duly licensed under the regulations of the Arkansas State Game and Fish Commission and the license is in effect at the time of the theft or attempt of theft; and

(2) Fails to post or to advertise such dog by posting notices in five (5) public places or by advertising the dog for one (1) publication in a newspaper having a bona fide circulation of five hundred (500) or more subscribers in this state.

(b) Any person who conceals or attempts to conceal a dog from the owner of such dog as herein prescribed at any hunting camp or elsewhere shall be guilty of an attempt to steal such dog.

(c) On recovery of a licensed dog by its owner, the owner shall pay to the party responsible for recovery all costs of posting or advertising the dog. This fee shall not exceed twenty-five cents (25¢) per day for care and feeding of the dog recovered under provisions of this section.

(d) Any person found guilty of stealing or attempting to steal any licensed dog commits a felony theft and shall be punished as prescribed by law.

History. Acts 1943, No. 146, § 9; 1951, No. 380, §§ 1-4; 1975, No. 928, §§ 18, 19; A.S.A. 1947, §§ 47-502, 47-525 — 47-528.

CHAPTER 43

HUNTING AND FISHING REGULATIONS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. HUNTING.
3. FISHING.
4. MUSSELS. [REPEALED.]

Publisher's Notes. Acts 1943, No. 146, § 20 provided that nothing in the act should repeal, amend, alter, or change any preexisting acts.

Preambles. Acts 1943, No. 146, contained a preamble which read: "Whereas, the Game and Fish Commission has been heretofore created and its duties prescribed by law; and

"Whereas, many of the laws pertaining to game and fish and enforcements of said

laws for their protection are contained in acts of the legislature running back many years; and

"Whereas, many justices of the peace and other enforcement officers do not have all the acts of Arkansas containing these laws;

"Now, therefore, the game and fish laws should be codified and this bill is offered in that purpose...."

RESEARCH REFERENCES

ALR. Entry on private lands in pursuit of wounded game as criminal trespass. 41 A.L.R.4th 805.

Am. Jur. 35 Am. Jur. 2d, Fish & G., § 46 et seq.

C.J.S. 36A C.J.S., Fish, § 28 et seq.
38 C.J.S., Game, § 10 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

15-43-101 — 15-43-103. [Repealed.]

15-43-104. Game and fish as state property.

15-43-105. Prima facie evidence of hunting and fishing.

SECTION.

15-43-106. [Repealed.]

15-43-107. Setting fires.

Cross References. Right of Congress to provide fish and game regulations in national forests, § 22-7-203.

Preambles. Acts 1945, No. 30, contained a preamble which read: "Whereas, the period now fixed for possessing of game after the season closes is not sufficient to properly use and conserve the game under the possession limits; and

"Whereas, adequate and modern storage facilities are now available to sportsmen; and

"Whereas, the Federal Government has liberalized the time for possessing of game;

"Now, therefore...."

Effective Dates. Acts 1893, No. 180, § 7: effective on passage.

Acts 1945, No. 30, § 3: approved Feb. 8, 1945. Emergency clause provided: "Whereas, it has been determined by the General Assembly of the State of Arkansas that the laws of the State of Arkansas and the Federal Laws and Regulations do not coincide and that it will be for the

better protection and preservation of the wildlife of the state if the possession laws were amended as herein set forth. This act being necessary for the preservation of the public peace, health, and safety, an emergency is hereby declared and this bill shall be in full force and effect from and after its passage."

Acts 1975, No. 197, § 6: Feb. 18, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present penalties for the criminal act of trespass are insufficient to be a deterrent to the commission of the crime; that great damage to both real and personal property results from trespassers; and that immediate passage of this act is necessary to eliminate the criminal act of trespass and promote the more efficient administration of justice. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

15-43-101 — 15-43-103. [Repealed.]

Publisher's Notes. Former §§ 15-43-101 — 15-43-103, concerning posted lands, were repealed by Acts 1999, No. 1029, §§ 5-7. The sections were derived from the following sources:

15-43-101. Acts 1963, No. 105, § 1;

1981, No. 712, § 1; A.S.A. 1947, § 47-532.

15-43-102. Acts 1963, No. 105, § 2; 1981, No. 712, § 2; A.S.A. 1947, § 47-533.

15-43-103. Acts 1963, No. 105, § 3; 1975, No. 197, § 2; 1981, No. 712, § 3; A.S.A. 1947, § 47-534.

15-43-104. Game and fish as state property.

All game and fish except fish in private ponds found in the limits of this state are declared to be the property of this state. The hunting, killing, and catching of the game and fish are declared to be privileges.

History. Acts 1893, No. 180, § 1, p. 328; C. & M. Dig., § 4753; Pope's Dig., § 5835; A.S.A. 1947, § 47-501.

CASE NOTES

ANALYSIS

In General.
Landowner's Rights.

In General.

The state ownership of fish and game is not such a proprietary interest as will authorize a sale thereof, or the granting of special interests therein, or license to enjoy, but is solely for the purpose of regulation and preservation for the common use, and is not inconsistent with a claim of individual or special ownership by the owner of the soil upon which they are found. *State v. Mallory*, 73 Ark. 236, 83 S.W. 955 (1904); *Fugett v. State*, 208 Ark. 979, 188 S.W.2d 641 (1945).

The fish and game of the state *ferae naturae* belong to the people collectively. *Lewis v. State*, 110 Ark. 204, 161 S.W. 154 (1913).

Landowner's Rights.

Owner of land has a special property

right to take fish and wild game upon his own land, subject to the limitation that it must always yield to the state's ownership and title, held for the purpose of regulation and preservation for the common use. *State v. Mallory*, 73 Ark. 236, 83 S.W. 955 (1904).

State cannot prevent a nonresident landowner from taking fish and game on his own property within the state while according the privilege to resident landowners. *State v. Mallory*, 73 Ark. 236, 83 S.W. 955 (1904); *State v. Stokes*, 117 Ark. 192, 174 S.W. 1156 (1915).

Where lake or pond is entirely on owner's land and there is no means of passage to the waters of other owners, the state has no right to prohibit him from taking fish therefrom and no right to give the exclusive right to do so to others. *Arkansas Game & Fish Comm'n v. Storthz*, 181 Ark. 1089, 29 S.W.2d 294 (1930).

15-43-105. Prima facie evidence of hunting and fishing.

(a) The possession of firearms in fields, forests, along streams, or in any location known to be game cover shall be considered prima facie evidence that the possessor is hunting.

(b) The possession of tackle, nets, spears, or other instruments usually used in fishing on or in the vicinity of lakes and streams shall be considered prima facie evidence that the possessor is fishing.

History. Acts 1943, No. 146, § 9; A.S.A. 1947, § 47-502.

CASE NOTES

Evidence.

Findings held supported by substantial

evidence. *Dennis v. State*, 26 Ark. App. 294, 764 S.W.2d 466 (1989).

15-43-106. [Repealed.]

Publisher's Notes. This section, concerning the lawful possession of game, was repealed by Acts 1999, No. 1557,

§ 42. The section was derived from Acts 1943, No. 146, § 9; 1945, No. 30, § 1; A.S.A. 1947, § 47-502.

15-43-107. Setting fires.

(a) It shall be unlawful for any person to set a fire or cause a fire to be set in the woods or marsh lands of another, and it shall also be unlawful for any person to leave any campfire without first extinguishing the fire or to build any campfire, or other fire, in any wooded area in a manner or place where it cannot be easily extinguished.

(b) Any person violating the provisions of subsection (a) of this section shall be guilty of a misdemeanor and on conviction fined in any sum not less than ten dollars (\$10.00).

History. Acts 1943, No. 146, § 9; A.S.A. 1947, § 47-502.

SUBCHAPTER 2 — HUNTING

SECTION.

15-43-201 — 15-43-203. [Repealed.]

15-43-204. Local election to redetermine doe killing area.

15-43-205. Negligent discharge of firearms while hunting deer.

15-43-206. Deer hunting camp on highways prohibited.

SECTION.

15-43-207 — 15-43-237. [Repealed.]

15-43-238. Hunter training and safety program.

15-43-239. Responsibilities of guides and their employers, etc.

15-43-240. [Repealed.]

Cross References. Penalty for enforcement of regulation against dogs running at large, § 15-41-113.

Preambles. Acts 1943, No. 114 contained a preamble which read: "Whereas, the extermination of the muskrat in many parts of central and southern Arkansas has resulted from this practice; and

"Whereas, the State Game and Fish Commission is now attempting to restore the muskrat in central and southern Arkansas through restocking; and

"Whereas, this restocking program will be greatly jeopardized unless the trapping, killing or taking of muskrat within ten (10) feet of a muskrat house be prohibited...."

Effective Dates. Acts 1917, No. 133, § 67: approved Feb. 23, 1917. Emergency clause provided: "This act, being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in force from and after its passage."

Acts 1919, No. 276, § 25: approved Mar. 17, 1919. Emergency clause provided: "This bill being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared, and this act shall take effect and be in force from and after its passage."

Acts 1931, No. 304, § 9: effective on passage.

Acts 1941, No. 20, § 4: approved Jan. 31, 1941. Emergency clause provided: "Because of the fact that the protection of homing or messenger pigeons is important for our national defense program, an emergency is hereby declared to exist and this act shall take effect and be in force from and after its passage."

Acts 1943, No. 114, § 4: effective on passage.

Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither ap-

proved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

CASE NOTES

Invalid Rule.
A former rule of the Game and Fish Commission, making special regulations for hunting deer in Grant County and other counties, but not in the whole state, was void as being in effect special legisla-

tion. *Arkansas Game & Fish Comm'n v. Clark*, 192 Ark. 840, 96 S.W.2d 699 (1936), superseded by statute as stated in, *Magruder v. Arkansas Game & Fish Comm'n*, 293 Ark. 39, 732 S.W.2d 849 (1987) (decision under prior law).

15-43-201 — 15-43-203. [Repealed.]

Publisher's Notes. Former §§ 15-43-201 — 15-43-203, concerning buck deer season and camping, possession and transportation of buck carcasses, bag limit on buck deer, and the protection of doe deer, were repealed by Acts 1999, No. 1557, §§ 43-45. The sections were derived from the following sources:

15-43-201. Acts 1943, No. 146, § 1; A.S.A. 1947, § 47-301.
15-43-202. Acts 1943, No. 146, § 1; A.S.A. 1947, § 47-301.
15-43-203. Acts 1943, No. 146, § 1; A.S.A. 1947, § 47-301.

15-43-204. Local election to redetermine doe killing area.

(a)(1) Whenever fifty (50) or more qualified electors residing within an area wholly or partly located within their particular county that has been designated by regulation of the Arkansas State Game and Fish Commission as a doe-killing area petition the appropriate county court, praying that an election be held to determine whether or not such an area or portion thereof should remain a doe-killing area, the county court shall order a special election in accordance with § 7-11-201 et seq. to be held not more than ninety (90) days after the date of filing of the petition.

(2) Only those qualified electors residing within the affected area or portion thereof that is located within the county where the election is held may vote in the election.

(3) Except as provided in this section, the election shall be held in conformity with the general election laws of this state.

(b) At the election it shall not be necessary to have a ballot title, but there shall be printed on the ballot the following:

“FOR ARKANSAS GAME AND FISH COMMISSION REGULATION PERMITTING THE KILLING OF DOES IN

(describe area affected)

☐

AGAINST ARKANSAS GAME AND FISH COMMISSION REGULATION PERMITTING THE KILLING OF DOES IN

(describe area affected)”

☐

(c)(1) If a majority of the qualified electors voting at the election vote for the commission regulation, the area or portion thereof within the county shall remain a doe-killing area in accordance with the regulation.

(2) If a majority of the qualified electors voting at the election vote against the commission regulation, the regulation shall no longer have any force or effect with respect to the area or portion thereof located within the county wherein the election was held, and the killing of doe deer therein shall be unlawful.

History. Acts 1959, No. 70, §§ 1-3; (3), (4), and (5); inserted (a)(2); and redesignated former (c) as present (c)(1) and (2). A.S.A. 1947, §§ 47-323 — 47-325; Acts 2005, No. 2145, § 59; 2007, No. 1049, § 81; 2009, No. 1480, § 99.

Amendments. The 2005 amendment redesignated former (a) as present (a)(1), The 2007 amendment rewrote (a). The 2009 amendment substituted “§ 7-11-201 et seq.” for “§ 7-5-103(b)” in (a)(1).

15-43-205. Negligent discharge of firearms while hunting deer.

(a) The General Assembly has become aware of the fact that many persons hunting deer in this state negligently allow their firearms to be discharged without exercising proper care to ascertain the object at which they shoot, thereby endangering the life, limb, and property of other persons. It is the intent of this section to deter the negligent use of firearms by deer hunters by imposing penalties therefor.

(b) A person who, while hunting deer, negligently discharges a firearm in such circumstances as to endanger the person or property of another shall be fined in an amount not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or may be imprisoned in the county jail for a period not less than thirty (30) days nor more than six (6) months, or be both fined and imprisoned.

History. Acts 1965, No. 412, §§ 1, 2; A.S.A. 1947, §§ 47-535, 47-535n.

15-43-206. Deer hunting camp on highways prohibited.

(a) It shall be unlawful for any person to set up and maintain a deer hunting camp on any state highway in this state other than at designated overnight public camping sites located on highway rights-of-way by the State Highway Commission.

(b) Any person violating the provisions of this section shall be guilty of a violation and upon conviction shall be fined in an amount not to exceed one hundred dollars (\$100). Each day during which a deer hunting campsite is maintained in violation of this section shall constitute a separate offense.

History. Acts 1977, No. 405, §§ 1, 2; A.S.A. 1947, §§ 76-562, 76-563.

15-43-207 — 15-43-237. [Repealed.]

Publisher's Notes. Former §§ 15-43-207 — 15-43-237, concerning dogs chasing deer in closed season, turkey season, bow and arrow season, beaver, otter, bear, elk, buffalo, prairie chickens, pheasants, hungarian or chukar partridges, etc., and quail season, hunting of geese, ducks, brant, coot, gallinule, Wilson snipe, or jack snipe, bag limits on certain birds, decoys, wild turkey, etc., and legal guns, quail, etc., and legal guns, migratory bird baiting and prohibition on guides carrying guns, antwerp, messenger, or homing pigeons, squirrels, shooting before sunrise or after sunset and the use of boats and airplanes, prohibition on trapping or capturing certain game or birds, open season, legal season, trapping, and the prohibition on fur-bearing animals, foxes, muskrat, federal regulations governing migratory birds, game birds and animals, waste of game, and the protection of birds' nests, songbirds, and young animals, were repealed by Acts 1999, No. 1557, §§ 46-76. The sections were derived from the following sources:

15-43-207. Acts 1917, No. 133, § 39, p. 695; 1919, No. 276, § 13; C. & M. Dig., § 4793; Pope's Dig., § 5879; A.S.A. 1947, § 47-302.

15-43-208. Acts 1943, No. 146, § 2; A.S.A. 1947, § 47-304.

15-43-209. Acts 1943, No. 146, § 2; A.S.A. 1947, § 47-304.

15-43-210. Acts 1943, No. 146, § 2; A.S.A. 1947, § 47-304.

15-43-211. Acts 1943, No. 146, § 2; A.S.A. 1947, § 47-304.

15-43-212. Acts 1943, No. 146, § 2; A.S.A. 1947, § 47-304.

15-43-213. Acts 1943, No. 146, § 1; A.S.A. 1947, § 47-301.

15-43-214. Acts 1943, No. 146, § 1; A.S.A. 1947, § 47-301.

15-43-215. Acts 1943, No. 146, § 1; A.S.A. 1947, § 47-301.

15-43-216. Acts 1943, No. 146, § 1; A.S.A. 1947, § 47-301.

15-43-217. Acts 1943, No. 146, § 3; A.S.A. 1947, § 47-305.

15-43-218. Acts 1927, No. 160, § 6; 1943, No. 146, § 4; 1945, No. 16, § 1; A.S.A. 1947, § 47-306.

15-43-219. Acts 1943, No. 146, § 4; A.S.A. 1947, § 47-306.

15-43-220. Acts 1927, No. 160, § 7; Pope's Dig., § 5875; A.S.A. 1947, § 47-307.

15-43-221. Acts 1927, No. 160, § 9; Pope's Dig., § 5882; A.S.A. 1947, § 47-308.

15-43-222. Acts 1931, No. 304, § 7; Pope's Dig., § 3644; A.S.A. 1947, §§ 47-309, 47-405n.

15-43-223. Acts 1943, No. 146, § 2; A.S.A. 1947, § 47-304.

15-43-224. Acts 1939, No. 353, §§ 1, 2; A.S.A. 1947, § 47-306.

15-43-225. Acts 1943, No. 146, § 8; A.S.A. 1947, § 47-201.

15-43-226. Acts 1931, No. 304, § 6; Pope's Dig., § 3643; A.S.A. 1947, § 47-310.

15-43-227. Acts 1941, No. 20, §§ 1-3; A.S.A. 1947, §§ 47-312 — 47-314.

15-43-228. Acts 1943, No. 146, § 5; A.S.A. 1947, § 47-315.

15-43-229. Acts 1927, No. 160, § 8; Pope's Dig., § 5876; A.S.A. 1947, § 47-311.

15-43-230. Acts 1917, No. 133, §§ 36, 44, p. 695; C. & M. Dig., §§ 4791, 4808; Pope's Dig., §§ 5873, 5909; A.S.A. 1947, §§ 47-303, 47-322.

15-43-231. Acts 1943, No. 146, § 7; A.S.A. 1947, § 47-316.

15-43-232. Acts 1943, No. 146, § 7; A.S.A. 1947, § 47-316.

15-43-233. Acts 1943, No. 146, § 7; A.S.A. 1947, § 47-316.

15-43-234. Acts 1943, No. 146, § 7; A.S.A. 1947, § 47-316.

15-43-235. Acts 1943, No. 114, §§ 1-3; A.S.A. 1947, §§ 47-317 — 47-319.

15-43-236. Acts 1943, No. 146, § 6; A.S.A. 1947, § 47-320.

15-43-237. Acts 1943, No. 146, § 9; A.S.A. 1947, § 47-502.

15-43-238. Hunter training and safety program.

(a) The General Assembly finds and determines that:

(1) The management of the state's wildlife and the regulation of hunting and hunters in the state are the primary responsibilities of the

Arkansas State Game and Fish Commission under Arkansas Constitution, Amendment 35;

(2) Properly regulated and controlled hunting is one of the most important single game management tools available in the propagation and management of wildlife;

(3) Untrained and improperly trained hunters account for a great percentage of the loss of game in this state as a result of the crippling of wildlife;

(4) The number of hunting accidents in the state is increasing annually and that this increase in hunter accidents is due primarily to the lack of training or the improper training of hunters;

(5) The establishment of a hunter training and safety program in this state would greatly improve and facilitate not only hunter safety but game management programs designed to improve the highly popular sport in this state; and

(6) It is the purpose and intent of this section to authorize the commission to establish and operate a hunter safety and training program in this state and to designate the commission as the appropriate agency to receive federal funds that may be or become available to the State of Arkansas for the establishment and operation of such program under Pub. L. 91-503 or other congressional acts presently in effect or hereafter enacted.

(b) The commission is authorized and encouraged to establish, maintain, and operate a program of hunter training and hunter safety in this state. The program shall include, but not be limited to, a course of instruction designed to teach the safe and proper handling of firearms, the suitability and effectiveness of various types of firearms for hunting the various types of game, the effective range and relative killing power of various firearms, the best placement of shots on large game to assure clean kills and fewer wounded game animals resulting from hunting in this state, and any other related matters deemed appropriate by the commission.

(c) The commission is designated as the appropriate state agency to receive, distribute, and disburse all federal funds available to the state under the provisions of Pub. L. 91-503 and similar or related congressional acts now in existence or hereafter enacted. The commission is authorized to use funds in the Game Protection Fund to match federal funds to carry out the provisions of this section.

(d) The commission is authorized to adopt and enforce rules and regulations it shall deem appropriate and necessary to properly carry out the purposes and intent of this section.

History. Acts 1971, No. 720, §§ 2-4; in this section, is codified as 16 U.S.C. A.S.A. 1947, §§ 47-538, 47-538n, 47-539, §§ 669b, 669c-669g-1, 777c, 777e-777g, 47-540. and 777k.

U.S. Code. Pub. L. 91-503, referred to

15-43-239. Responsibilities of guides and their employers, etc.

(a) As used in this section, “guide” means any person who shall for pay or for other consideration aid, help, or assist any person or persons in locating, pursuing, chasing, hunting, or killing in this state any game bird, game, fur-bearing animal, or fish protected under the laws of the state, or who shall for hire accompany any person or persons on a hunting expedition or trip.

(b) Any person who acts as a guide for another person shall be equally responsible with that person for any violation of the game and fish laws of this state unless the guide shall report to the Arkansas State Game and Fish Commission or its representative any violation of the game and fish laws committed by a person being guided by him or her.

(c) Any person employing and accompanying a guide shall be equally responsible with the guide for any violation of the game and fish laws of this state committed by the guide when he or she is in the employ of that person.

(d) Any person violating any provision of subsections (b) and (c) of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than twenty-five dollars (\$25.00).

(e) If the operator of a boat dock or fishing landing recommends the employment of a guide by a fisherman, such recommendation shall not cause the relationship of employer and employee to arise between the boat dock or fishing landing operator and the guide.

History. Acts 1943, No. 146, § 8; A.S.A. 1947, § 47-201; Acts 1993, No. 403, § 9.

15-43-240. [Repealed.]

Publisher’s Notes. This section, concerning the prohibition of lighting devices for nighttime shooting, was repealed by Acts 1991, No. 786, § 21. The section was

derived from Acts 1943, No. 146, § 9; 1965, No. 110, §§ 1, 2; A.S.A. 1947, §§ 47-502, 47-536, 47-537.

SUBCHAPTER 3 — FISHING

SECTION.

- 15-43-301. Definitions.
- 15-43-302 — 15-43-315. [Repealed.]
- 15-43-316. Use of electrical device for stunning and taking fish.
- 15-43-317 — 15-43-323. [Repealed.]
- 15-43-324. General regulation of hoop, barrel, or pond nets.

SECTION.

- 15-43-325 — 15-43-328. [Repealed.]
- 15-43-329. Taking fish from enclosed lake or pond — Posting.
- 15-43-330. Taking fish from fish farm.

Publisher's Notes. Acts 1933, No. 113, § 14, provided, in part, that the Act was cumulative to existing statutes.

Preambles. Acts 1943, No. 213 contained a preamble which read: "Whereas, there is a demand for gar fish, turtles, and other uneatable fish to be manufactured into fish meal, fish oil, and fat to be converted into glycerine for war purposes; and

"Whereas, most of the fish and turtles formerly used in the manufacture of these products came from coastal waters; and

"Whereas, due to war conditions these waters have been closed to fishing; and

"Whereas, gar fish and native Arkansas turtles and other uneatable fish have been found suitable for these purposes; and

"Whereas, several manufacturers of these products have contacted the Game and Fish Commission with the object of obtaining a sufficient supply of said gar fish, turtles, and other uneatable fish to be converted into the above-named products; and

"Whereas, there is an over supply of gar fish, turtles, and other uneatable fish in the waters of the State of Arkansas...."

Effective Dates. Acts 1875, No. 69, § 3: effective on passage.

Acts 1917, No. 133, § 67: approved Feb. 23, 1917. Emergency clause provided: "This act, being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in force from and after its passage."

Acts 1927, No. 151, § 16: effective on passage, except repeal of Acts 1919, No. 99, effective Jan. 1, 1928.

Acts 1929, No. 82, § 2: effective on passage.

Acts 1933, No. 113, § 14: Mar. 18, 1933. Emergency clause provided: "In view of the fact that this Act effects substantial reductions in existing fishing license fees and provides regulations that are immediately necessary in the preservation of the wildlife resources of the State, and because existing conditions demand immediate relief from present license fees required by law, an emergency is declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety it shall take effect and be in force from and after its passage and approval."

Acts 1939, No. 378, § 24: approved Mar. 17, 1939. Emergency clause provided: "It is hereby found and declared, because of the pressing need for change in existing laws relating to the conservation and propagation of Game and Fish in the State of Arkansas, an emergency is hereby found and declared to exist and this act, being necessary for the preservation of the public peace, health and safety, the same shall take effect and be in force from and after its passage."

Acts 1943, No. 24, § 3: approved Feb. 9, 1943. Emergency clause provided: "It being necessary to increase the supply of food for human consumption, during the emergency created by War, and there being an abundance of fish that can be saved by picnic seining, an emergency is declared to exist, and this act being necessary for the preservation of the peace, health and safety, shall take effect and be in force from and after its passage."

Acts 1943, No. 239, § 2: approved Mar. 15, 1943. Emergency clause provided: "It having been discovered that the provisions of Act No. 24 of the Acts of the General Assembly of 1943 as approved by the Governor completely destroys by limitation the use of minnows for fishing purposes in a large part of the State, and the same being necessary for the purpose of increasing the supply of food for human consumption, an emergency is declared to exist, and this Act being necessary for the preservation of the peace, health and safety it shall take effect and be in full force from and after its passage."

Acts 1943, No. 319, § 3: Jan. 1, 1944.

Acts 1981, No. 44, § 4: Feb. 10, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that many persons enter upon the land containing fish farms and take fish from such fish farms without the consent of the owner; that the present criminal law is inadequate as a deterrent to such theft; and that this Act is immediately necessary in order to establish appropriate criminal penalties for the theft of fish from fish farms. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

CASE NOTES

Concurrent Jurisdiction.

The concurrent jurisdiction which two states may have over the width of a river, the center of which forms the territorial boundaries of the states, is not to be construed as giving one state authority to

punish violations of its fish laws occurring beyond its side of the river, if the act is authorized by the neighboring state. *State v. Alexander*, 222 Ark. 376, 259 S.W.2d 677 (1953).

15-43-301. Definitions.

As used in this act, unless the context otherwise requires:

(1) A “single owner”, as used in subdivision (2), may be an individual person, partnership, or corporation, or may be several persons who as tenants in common own the entire premises in question; and

(2) “Waters of this state” means all streams, lakes, ponds, sloughs, bayous, marshes, or other waters, wholly or in part within this state. Provided, that waters which are confined within a pond, tank, or lake, situated entirely on the premises of a single owner and which, except under abnormal flood conditions, are in no way connected by water or with any other flowing stream or body of water, or with any other body of water not situated on the premises of the owner, are declared to be privately owned waters and shall not be construed to be included in the expression “waters of this state”.

History. Acts 1943, No. 146, § 14; 1955, No. 152, § 1; A.S.A. 1947, § 47-411.

Meaning of “this act”. Acts 1943, No. 146, codified as §§ 15-41-109, 15-41-111, 15-41-203, 15-41-205, 15-41-207, 15-41-208, 15-42-119, 15-42-204, 15-42-205, 15-42-209, 15-42-210, 15-42-302, 15-42-303, 15-43-105 — 15-43-107, 15-43-201 — 15-43-203, 15-43-208 — 15-43-219, 15-43-

223, 15-43-225, 15-43-228, 15-43-231 — 15-43-234, 15-43-236, 15-43-237, 15-43-239, 15-43-240 [repealed], 15-43-301 — 15-43-311, 15-43-318 — 15-43-321, 15-43-323, 15-43-324, 15-43-326, 15-43-403 — 15-43-406, 15-44-101, 15-44-104, 15-44-108, 15-44-109, 15-44-113, 15-45-201 — 15-45-203, 15-45-205 — 15-45-207, 15-45-212, 15-46-101.

CASE NOTES

Constitutionality.

Subdivision (2) of this section attempts to prohibit the Game and Fish Commission from regulating the harvesting of fish from privately owned waters, and the General Assembly has been divested of

this power by Ark. Const., Amend. 35, which gives the commission exclusive authority to regulate the sale of fish from private waters. *Fowler v. State*, 283 Ark. 325, 676 S.W.2d 725 (1984).

15-43-302 — 15-43-315. [Repealed.]

Publisher’s Notes. Former §§ 15-43-302 — 15-43-315, concerning the closed season for fishing with artificial bait, lawful bait, the general minimum fish length, the general string limit, trout season and the length and string limit, closed season

on black bass, closed season on minnows and the prohibition on exportation, minnow seines, minnow dealer’s license and closing water to minnow taking, hooks and lines, and trapping, grabbling, hogging, gigging and spearing fish, were re-

pealed by Acts 1999, No. 1557, §§ 77-90. The sections were derived from the following sources:

15-43-302. Acts 1943, No. 146, § 10; A.S.A. 1947, § 47-401.

15-43-303. Acts 1943, No. 146, § 10; A.S.A. 1947, § 47-401.

15-43-304. Acts 1943, No. 146, § 10; A.S.A. 1947, § 47-401.

15-43-305. Acts 1943, No. 146, § 10; A.S.A. 1947, § 47-401.

15-43-306. Acts 1943, No. 146, § 10; A.S.A. 1947, § 47-401.

15-43-307. Acts 1943, No. 146, § 10; A.S.A. 1947, § 47-401.

15-43-308. Acts 1943, No. 24, § 1; 1943, No. 146, § 12; A.S.A. 1947, § 47-402.

15-43-309. Acts 1943, No. 24, § 1; 1943, No. 146, § 12; 1943, No. 239, § 1; A.S.A. 1947, § 47-402.

15-43-310. Acts 1943, No. 24, § 1; 1943, No. 146, § 12; A.S.A. 1947, § 47-402.

15-43-311. Acts 1943, No. 24, § 1; 1943, No. 146, § 12; A.S.A. 1947, § 47-402.

15-43-312. Acts 1937, No. 312, §§ 1, 2; Pope's Dig., §§ 5966, 5967; A.S.A. 1947, §§ 47-403, 47-404.

15-43-313. Acts 1933, No. 113, § 11; Pope's Dig., § 5968; A.S.A. 1947, §§ 47-405, 47-405n.

15-43-314. Acts 1941, No. 430, § 1; A.S.A. 1947, § 47-406.

15-43-315. Acts 1939, No. 378, § 14; A.S.A. 1947, § 47-107.

15-43-316. Use of electrical device for stunning and taking fish.

(a) It shall be unlawful for any person to use, possess, transport, or attempt to use any electrical device for the purpose of stunning, stupefying, or taking fish from any of the waters of this state.

(b) Any person violating any provision of this section shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than one thousand dollars (\$1,000) or imprisoned in the county jail not exceeding one (1) year, or both fine and imprisonment.

History. Acts 1955, No. 46, §§ 1, 2; A.S.A. 1947, §§ 47-419, 47-420.

CASE NOTES

Constitutionality.

This section may be unconstitutional because Ark. Const., Amend. 35 granted the Arkansas State Game and Fish Commission the exclusive power and authority

to regulate the manner of taking game and fish. *Farris v. Arkansas State Game & Fish Comm'n*, 228 Ark. 776, 310 S.W.2d 231 (1958).

15-43-317 — 15-43-323. [Repealed.]

Publisher's Notes. Former §§ 15-43-317 — 15-43-323, concerning the use of intoxicating or stupefying substances, guns, or explosives, general commercial regulations for and closing water to the use of seine, trammel, and gill nets, picnic seines, minimum length of commercial fish, catching or displaying certain fish by commercial fishermen, licenses and commercial trotlines, snag lines, set hooks, hooks and lines, gigs, and spears, were repealed by Acts 1999, No. 1557, §§ 91-97.

The sections were derived from the following sources:

15-43-317. Acts 1917, No. 133, § 46; C. & M. Dig., §§ 4787; Acts 1927, No. 151, § 7; Pope's Dig., §§ 5943, 5972; A.S.A. 1947, §§ 47-408, 47-409.

15-43-318. Acts 1943, No. 146, § 13; A.S.A. 1947, § 47-410.

15-43-319. Acts 1943, No. 146, § 13; A.S.A. 1947, § 47-410.

15-43-320. Acts 1943, No. 146, § 13; A.S.A. 1947, § 47-410.

15-43-321. Acts 1943, No. 146, § 13;
A.S.A. 1947, § 47-410.

15-43-322. Acts 1933, No. 113, § 1;
Pope's Dig., § 5957; A.S.A. 1947, §§ 47-
405n, 47-510.

15-43-323. Acts 1943, No. 146, § 14[A];
1943, No. 319, § 1; A.S.A. 1947, § 47-413.

15-43-324. General regulation of hoop, barrel, or pond nets.

(a) It shall be unlawful for any person to own, possess, or use, in this state, any hoop, barrel, or pond net on which license has not been paid, except as herein provided.

(b) Such nets shall contain meshes not less than two and one-half inches (2½") square.

(c) The annual license to use or possess hoop, barrel, or pond nets shall be one dollar (\$1.00) each. With each net license there shall be issued a metal tag for each net authorized by such license and bearing a corresponding number thereto. Such tag shall be securely attached to the first hoop at the mouth of the net and shall remain attached thereto unless temporarily removed at the vat for tarring the net; provided, new, unused nets may be possessed without license or tags. The license and accompanying tags shall be in form and substance as approved by the Arkansas State Game and Fish Commission, and revenues arising therefrom shall be credited to the Game Protection Fund.

(d) The use or possession of any net or seine contrary to law is declared to be a public nuisance, and the confiscation thereof is declared to be necessary in protecting the public against such nuisance. Any sheriff, constable, warden, or other police officer who finds an illegally possessed or used net or seine, or a net or seine with illegal mesh, shall deliver the net or seine to a justice of the peace of the county where the net or seine is found. If the tackle is legal in make-up, the justice of the peace shall sell the net or seine to the highest and best bidder and pay the proceeds therefrom to the county treasurer of his or her county for transmittal to the Treasurer of State, to be credited to the Game Protection Fund, but if the tackle is illegal in structure, he or she shall order it destroyed immediately.

(e) Where any lead or wing is used in connection with any hoop, barrel, or pond net in overflow water, no other lead, net, or wing shall be set a closer distance to the lead or wing than the total length of the lead or wing. No lead or wing longer than one hundred (100) yards in length shall be used or set so as to obstruct more than fifty percent (50%) of the open water within the banks of any stream or body of water. No lead or wing used with hoop, barrel, or pond nets shall be dragged or moved through the water for the purpose of seining, or surrounding fish, but the lead or wing shall remain fixed after being set. It shall be unlawful for any person to drive or attempt to drive fish into wings or leads, pond, barrel, or hoop nets, by any means whatsoever. Leads or wings shall contain mesh not less than two and one-half inches (2½") square.

(f) Any person violating any provision of subsections (a)-(e) of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than twenty-five dollars (\$25.00).

History. Acts 1943, No. 146, § 14; 1943, No. 319, § 2; 1955, No. 152, § 1; A.S.A. 1947, § 47-411.

15-43-325 — 15-43-328. [Repealed.]

Publisher's Notes. Former §§ 15-43-325 — 15-43-328, concerning prohibitions on use of hoop nets and exceptions, control of gar, turtles, etc., removal of predators from state waters, and owner's permission for commercial entry on private lake, were repealed by Acts 1999, No. 1557, §§ 98-101. The sections were derived from the following sources:

15-43-325. Acts 1927, No. 151, § 3; Pope's Dig., § 5938; A.S.A. 1947, § 47-412.

15-43-326. Acts 1943, No. 146, § 18A; 1943, No. 213, §§ 1-3; A.S.A. 1947, §§ 47-416 — 47-418.

15-43-327. Acts 1927, No. 151, § 2; Pope's Dig., § 5937; A.S.A. 1947, § 47-414.

15-43-328. Acts 1929, No. 82, § 1; Pope's Dig., § 5941; A.S.A. 1947, § 47-415.

15-43-329. Taking fish from enclosed lake or pond — Posting.

(a) If any person shall take fish from any enclosed or artificial lake or pond of water belonging to any other person, without the consent of the owner, he or she shall be deemed guilty of a misdemeanor. Upon conviction, he or she shall be fined in the sum of one hundred dollars (\$100) or be imprisoned in the county jail not more than thirty (30) days.

(b) Before any person shall have the benefit of this section, he or she shall first give notice of his or her intention to breed or cultivate fish in the enclosed or artificial lake or pond of water; he or she shall post three (3) or more notices in the precinct of the enclosed or artificial lake or pond of water of his or her intention, warning all persons not to take fish from the lake or pond.

History. Acts 1875, No. 69, §§ 1, 2, p. 158; C. & M. Dig., § 4817; Pope's Dig., § 5452; A.S.A. 1947, §§ 47-516, 47-517.

15-43-330. Taking fish from fish farm.

(a) It shall be unlawful for any person to fish or take fish from any fish farm except with the consent of the owner thereof. Any person possessing fishing tackle on the premises of a fish farm shall be rebuttably presumed to be fishing. All fishing tackle, apparatus, and vehicles used in the violation of this section shall be confiscated by the arresting officer. If the confiscated property is determined by a court of law to have been used in the violation of this section, the confiscated property shall be sold at public auction by the county sheriff of the county wherein the violation occurred. The proceeds of the sale shall be

deposited in the county general fund, provided that the auction may be stayed by an appropriate court order.

(b) Any person convicted of violating this section shall be deemed guilty of a misdemeanor and fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) and imprisoned for not less than ninety (90) days nor more than six (6) months for the first offense, and for subsequent offenses fined not less than one thousand dollars (\$1,000) nor more than two thousand dollars (\$2,000) and imprisoned for not less than six (6) months nor more than one (1) year.

History. Acts 1981, No. 44, §§ 1, 2;
A.S.A. 1947, §§ 47-541, 47-542.

SUBCHAPTER 4 — MUSSELS

SECTION.
15-43-401 — 15-43-407. [Repealed.]

15-43-401 — 15-43-407. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 1999, No. 1557, §§ 102-108. The subchapter was derived from the following sources:
15-43-401. Acts 1923, No. 561, § 10; Pope's Dig., § 5986; A.S.A. 1947, § 47-604.
15-43-402. Acts 1923, No. 561, § 9; Pope's Dig., § 5985; A.S.A. 1947, § 47-602.
15-43-403. Acts 1943, No. 146, § 16; A.S.A. 1947, § 47-601.

15-43-404. Acts 1943, No. 146, § 16; A.S.A. 1947, § 47-601.
15-43-405. Acts 1943, No. 146, § 16; A.S.A. 1947, § 47-601.
15-43-406. Acts 1943, No. 146, § 16; A.S.A. 1947, § 47-601.
15-43-407. Acts 1923, No. 561, § 5; Pope's Dig., § 5981; A.S.A. 1947, § 47-603.

CHAPTER 44
MISCELLANEOUS WILDLIFE REGULATIONS

SECTION.
15-44-101 — 15-44-107. [Repealed.]
15-44-108. Storage regulations.
15-44-109. [Repealed.]
15-44-110. Dams, etc. — Fish runways.
15-44-111. Limits on public water withdrawal.

SECTION.
15-44-112. [Repealed.]
15-44-113. [Repealed.]
15-44-114. Wildlife causing crop damage.

Publisher's Notes. Acts 1943, No. 146, § 20 provided that nothing in the act should repeal, amend, alter, or change any preexisting acts.
Preambles. Acts 1943, No. 146 contained a preamble which read: "Whereas, The Game and Fish Commission has been

heretofore created and its duties prescribed by law; and
"Whereas, many of the laws pertaining to game and fish and enforcements of said laws for their protection are contained in acts of the legislature running back many years; and

"Whereas, many justices of the peace and other enforcement officers do not have all the acts of Arkansas containing these laws;

"Now, therefore, the game and fish laws should be codified and this bill is offered in that purpose...."

Acts 1945, No. 23 contained a preamble which read: "Whereas, the supply of bullfrogs in the State of Arkansas is rapidly being depleted by the exporting of hundreds of thousands of them each year; and

"Whereas, to prevent the bullfrog from being exterminated in the State of Arkansas it is necessary that some protection be given them...."

Effective Dates. Acts 1879, No. 51, § 4: effective 60 days after passage.

Acts 1893, No. 180, § 7: effective on passage.

Acts 1899, No. 188, § 2: effective on passage.

Acts 1917, No. 133, § 67: approved Feb. 23, 1917. Emergency clause provided: "This act, being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in force from and after its passage."

Acts 1919, No. 276, § 25: approved Mar. 17, 1919. Emergency clause provided: "This bill being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared, and this act shall take effect and be in force from and after its passage."

Acts 1927, No. 151, § 16: effective on passage.

Acts 1945, No. 23, § 3: effective on passage.

15-44-101 — 15-44-107. [Repealed.]

Publisher's Notes. Former §§ 15-44-101 — 15-44-107, concerning prohibition on game buying, selling, bartering, etc., permits for authorized captivity, sale of game fish and exception, exportation of certain game and fish, possession of game lawfully taken in another state, nonresident carrying or shipping of game, shipping specimens out of state for mounting, tanning, etc., and refusal of package by carrier, were repealed by Acts 1999, No. 1557, §§ 109-115. The sections were derived from the following sources:

15-44-101. Acts 1943, No. 146, § 9; A.S.A. 1947, § 47-502.

15-44-102. Acts 1927, No. 151, § 5; Pope's Dig., § 5940; A.S.A. 1947, § 47-511.

15-44-103. Acts 1927, No. 160, § 25; Pope's Dig., § 5867; A.S.A. 1947, § 47-503.

15-44-104. Acts 1943, No. 146, § 9; A.S.A. 1947, § 47-502.

15-44-105. Acts 1927, No. 160, § 20; Pope's Dig., § 5888; A.S.A. 1947, § 47-506.

15-44-106. Acts 1893, No. 180, § 4, p. 328; C. & M. Dig., § 4801; Pope's Dig., § 5905; A.S.A. 1947, § 47-507.

15-44-107. Acts 1917, No. 133, §§ 58, 61, p. 695; 1919, No. 276, § 22; C. & M. Dig., §§ 4799, 4807; Pope's Dig., §§ 5886, 5908; A.S.A. 1947, §§ 47-504, 47-505.

15-44-108. Storage regulations.

(a) Any person, firm, or corporation owning or operating any cold storage plant or facility therefor who permits or authorizes the storing of any game animals or birds therein shall keep a complete list of the game animals or birds as are placed in storage, together with the name of the owners thereof, and any owner before placing any game birds or animals in cold storage shall attach thereto a card bearing his or her name, the number of birds or animals owned by him or her, and the date placed therein. This tag shall remain attached thereto during the period of storage. The animals, birds, and records shall be subject to inspection by a duly qualified officer at any and all times.

(b) A violation of any provision of subsection (a) of this section shall constitute a misdemeanor. Persons or concerns convicted under this section shall be fined in any sum not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500).

History. Acts 1943, No. 146, § 9; A.S.A. 1947, § 47-502.

15-44-109. [Repealed.]

Publisher's Notes. This section, concerning serving quail or other game at cafes, banquets, etc., was repealed by Acts 1999, No. 1557, § 116. The section was derived from Acts 1943, No. 146, § 4; A.S.A. 1947, § 47-306.

15-44-110. Dams, etc. — Fish runways.

(a) Any person owning or controlling any dam or other obstruction across any river, creek, or other watercourse in this state is required to keep the dam or other obstruction open sufficiently to admit the free and easy passage of all fish ascending or descending the river or other watercourse from March 1 until June 1 of each year.

(1) This section shall not apply to dams constructed for the accumulation of water power for mills and manufactories.

(2) All persons owning or controlling any dam constructed for the accumulation of water power for mills and manufactories are required to construct and to keep open a chute over the dam or obstruction, sufficient for the passage of all fish ascending or descending the river or watercourse.

(b)(1) It shall be unlawful to obstruct or block, cut off, or dam any stream or body of water in this state so that the free and easy passage of fish is not permitted at all times unless the provisions of subsection (a) of this section are complied with.

(2) A violation of this section shall be a misdemeanor, and convicted persons shall be fined in any sum not less than ten dollars (\$10.00) nor more than five hundred dollars (\$500).

History. Acts 1879, No. 51, § 2, p. 60; 1899, No. 188, § 1, p. 332; C. & M. Dig., § 4789; Acts 1927, No. 151, § 12; Pope's Dig., §§ 5947, 5974; A.S.A. 1947, §§ 47-512, 47-514.

Cross References. Dams to be kept open, § 5-72-107.

Water power dams, fish chute required, § 23-18-402.

15-44-111. Limits on public water withdrawal.

(a) It shall be unlawful for any person, firm, or corporation to:

(1) Withdraw, in any manner, any water from any public body of water in this state without first securely screening the intake pipes used in such withdrawal against the entry of any fish;

(2) Lower the natural stage of any body of water to a point whereby the existence of fish in it is endangered.

(b) Persons violating any provision of this section shall be guilty of a misdemeanor and on conviction fined in any sum not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500).

History. Acts 1927, No. 151, § 13; Pope's Dig., § 5948; A.S.A. 1947, § 47-515.

15-44-112. [Repealed.]

Publisher's Notes. This section, concerning the prohibition on bullfrog exportation, was repealed by Acts 1999, No. 1557, § 117. The section was derived from Acts 1945, No. 23, §§ 1, 2; A.S.A. 1947, §§ 47-508, 47-509.

15-44-113. [Repealed.]

Publisher's Notes. This section, concerning fur dealers' reports, was repealed by Acts 1999, No. 1557, § 118. This section was derived from Acts 1943, No. 146, § 7; A.S.A. 1947, § 47-316.

15-44-114. Wildlife causing crop damage.

(a) Upon the request of any farmer with demonstrated damage to an agricultural crop from wildlife, the game warden shall assist the farmer by implementation of a control program to relocate or eradicate the wildlife which is causing injury to the crop of the farmer.

(b) The program developed by the game warden may authorize the farmer for limited use of nighttime hunting of the specific wildlife causing damage to the crop.

(c) Any program developed under the provisions of this section shall be exempt from all hunting laws of the State of Arkansas, except those federal and state laws which prohibit destruction of endangered or protected species.

History. Acts 1989, No. 814, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey, Agricultural Law, 12 U. Ark. Little Rock L.J. 597.

CHAPTER 45 WILDLIFE PRESERVATION

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. GAME AND FISH REFUGES.
3. NONGAME PRESERVATION.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.
15-45-101. Wildlife habitat conservation

on private lands — Licens-
ing agreements.

15-45-101. Wildlife habitat conservation on private lands —
Licensing agreements.

- (a) To encourage wildlife habitat conservation on private lands, the Arkansas State Game and Fish Commission shall enter into licensing agreements for a duration of not less than ten (10) years for approved projects on privately owned lands.
- (b) The licensing agreements shall detail the landowner’s responsibilities.
- (c) Expenditures by owners of private lands for these wildlife habitat conservation projects approved by the commission and covered by a licensing agreement shall be considered contributions to or for the use of the State of Arkansas.

History. Acts 1985, No. 417, § 8; A.S.A. 1947, § 47-230.

SUBCHAPTER 2 — GAME AND FISH REFUGES

SECTION.
15-45-201 — 15-45-208. [Repealed.]
15-45-209. County appraisal board —
Crop damage.
15-45-210. Entire state as wild fowl sanc-
tuary — Permits for scien-
tific study, etc.

SECTION.
15-45-211. State parks as bird sanctuar-
ies.
15-45-212. [Repealed.]

Publisher’s Notes. Acts 1943, No 146, § 20 provided that nothing in the act should repeal, amend, alter, or change any preexisting acts.

Preambles. Acts 1943, No. 146 contained a preamble which read: “Whereas, The Game and Fish Commission has been heretofore created and its duties prescribed by law; and

“Whereas, many of the laws pertaining to game and fish and enforcements of said laws for their protection are contained in acts of the legislature running back many years; and

“Whereas, many justices of the peace and other enforcement officers do not have all the acts of Arkansas containing these laws;

“Now, therefore, the game and fish laws should be codified and this bill is offered in that purpose....”

Acts 1967, No. 78 contained a preamble which read: “Whereas, the geographical location of the State of Arkansas and the abundance of natural resources found herein are conducive to the seasonal congregation of both native and migratory birds and waterfowl in large numbers and many varieties; and

“Whereas, the presence of such birds brings the beauty of plumage and of song to the people of Arkansas, and has become a source of interest and of enjoyment to our citizens and the many out-of-state visitors each year; and

“Whereas, many of these birds perform an invaluable service to our State in helping rid it of seeds from noxious weeds and of insects harmful to plant life; thereby helping to insure better and more plentiful crops in field and orchard, and better health in our communities; and

"Whereas, it is the consensus of the General Assembly that the continued presence and frequent visits of these birds should be encouraged by legislation designed to protect them from indiscriminate slaughter and from the encroachments of civilization, and that the public here and throughout the nation should be made aware of the great abundance of such birds in Arkansas, and in our interest in their protection...."

Effective Dates. Acts 1933 (1st Ex. Sess.), No. 9, § 3; Aug. 24, 1933. Emergency clause provided: "It being one of the proper functions of government to pre-

serve and protect wildlife, and it being made to appear that game animals, game birds and fish abound within certain areas within the state, and that said areas are practically worthless for agricultural purposes, or for any purpose other than game refuges, and that unless same is properly protected, the wildlife therein will be destroyed, and that this act is necessary for the immediate preservation of public peace, health and safety, an emergency is hereby declared to exist, and this act shall be in full force and effect after its passage and approval."

CASE NOTES

Eminent Domain.

The Arkansas State Game and Fish Commission may condemn lands for use in the propagation and conservation of

fish and game. *Arkansas State Game & Fish Comm'n v. W.R. Wrape Stave Co.*, 76 F. Supp. 323 (E.D. Ark. 1948).

15-45-201 — 15-45-208. [Repealed.]

Publisher's Notes. Former §§ 15-45-201 — 15-45-208, concerning rules and regulations and the penalty for violation, creation of state game refuges, and the prohibition on state disposal of refuge lands, were repealed by Acts 1999, No. 1557, §§ 119-126. The sections were derived from the following sources:

15-45-201. Acts 1943, No. 146, § 15; A.S.A. 1947, § 47-701.

15-45-202. Acts 1943, No. 146, § 15; A.S.A. 1947, § 47-701.

15-45-203. Acts 1943, No. 146, § 15; A.S.A. 1947, § 47-701.

15-45-204. Acts 1933 (1st Ex. Sess.), No. 9, § 1; Pope's Dig., § 5997; A.S.A. 1947, § 47-702.

15-45-205. Acts 1943, No. 146, § 15; A.S.A. 1947, § 47-701.

15-45-206. Acts 1943, No. 146, § 15; A.S.A. 1947, § 47-701.

15-45-207. Acts 1943, No. 146, § 15; A.S.A. 1947, § 47-701.

15-45-208. Acts 1933 (1st Ex. Sess.), No. 9, § 2; Pope's Dig., § 5998; A.S.A. 1947, § 47-703.

15-45-209. County appraisal board — Crop damage.

(a) There is created an appraisal board in each county of this state composed of the game warden of that county and two (2) farmers who are landowners in the county appointed by the county judge and county agent.

(b) It shall be the duty of the appraisal board to investigate and determine the amount of damages payable to the owner, lessor, tenant, or other persons owning agricultural crops within, adjacent to, or near game refuges and game management areas where crops have been damaged by wildlife in the game reservation.

(c) All moneys appropriated by the General Assembly to be expended from the Game Protection Fund for damages to agricultural crops

caused by wildlife as provided in this section shall be approved by the appraisal board before payment shall be made.

History. Acts 1951, No. 274, §§ 1, 2; 1953, No. 99, § 1; A.S.A. 1947, §§ 47-704, 47-705.

15-45-210. Entire state as wild fowl sanctuary — Permits for scientific study, etc.

(a) The entire State of Arkansas is designated, and shall constitute, a sanctuary for wild fowl of all species except black birds, crows, and starlings. No person shall catch, kill, injure, pursue, or have in his or her possession, either dead or alive, or purchase, expose for sale, transport, or ship to a point within or without the state, or receive or deliver for transportation any species of wild fowl except black birds, crows, and starlings unless authorized to do so by a validly adopted regulation of the Arkansas State Game and Fish Commission or by a federal regulation constitutionally adopted and imposed. However, sparrows and pigeons shall be excluded from the provisions of this section, provided that the exemption of pigeons from the provisions of this section shall not apply to Birmingham roller pigeons.

(b)(1) Nothing contained in this section shall prohibit any person or institution from collecting wild birds or their nests or eggs, except birds protected by federal or state game laws, for scientific study, school instruction, or other educational uses.

(2) Any person desiring to collect birds or their nests or eggs by authority of this section shall make application with the Director of the Arkansas State Game and Fish Commission for a scientific collecting permit on a form furnished by the director.

(3) This application shall state the interest and need of the applicant in collection and the species and the number desired to be collected.

(4) Upon issuance of the permit, the holder shall carry the permit at all times while engaged in collecting and shall exhibit the permit upon demand to any law enforcement officer or person in lawful control of the land upon which he or she is collecting.

(5) A record shall be kept at all times by the permit holder of the number and variety of birds or their nests or eggs collected by authority of the permit, and a copy shall be sent to the Director of the Arkansas State Game and Fish Commission on or before June 30 of each year or upon demand by the director.

(6) Each permit shall be issued for a period of one (1) year from date and shall be issued without charge.

(c) Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined in an amount not to exceed fifty dollars (\$50.00).

History. Acts 1967, No. 78, §§ 1, 2, 4; A.S.A. 1947, §§ 47-709 — 47-711.

15-45-211. State parks as bird sanctuaries.

(a) The entire areas embraced within the limits of any and all state parks of this state are designated and established as bird sanctuaries.

(b) It shall be unlawful for any person to trap, hunt, shoot, or attempt to shoot or molest in any manner any bird or wild fowl or to rob birds' nests or wild fowl's nests in these areas. However, if starlings or similar birds are found to be congregating in such numbers in a particular locality as in the opinion of the Department of Health constitutes a nuisance or a menace to health or property, then officials of the Department of Health, after giving three (3) days' notice of the time and place of the meeting, shall meet with representatives of the Audubon Society, bird club, garden club, or humane society, or with as many of those clubs as are found to exist in the state, to discuss possible solutions to the problem. If, as a result of the meeting, no satisfactory alternative is found to abate the nuisance, then the birds may be destroyed in such numbers and in such manner as is deemed advisable by the Department of Health under the supervision of the Director of the Department of Arkansas State Police.

(c) Any person violating any provision of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one hundred dollars (\$100) or by imprisonment not exceeding thirty (30) days.

History. Acts 1957, No. 223, §§ 1-3; A.S.A. 1947, §§ 47-706 — 47-708.

perseded by § 15-45-210 as to collection of birds or wild fowl and their nests.

Publisher's Notes. This section is su-

15-45-212. [Repealed.]

Publisher's Notes. This section, concerning expenses, was repealed by Acts 1999, No. 1557, § 127. The section was

derived from Acts 1943, No. 146, § 15; A.S.A. 1947, § 47-701.

SUBCHAPTER 3 — NONGAME PRESERVATION**SECTION.**

15-45-301. Legislative intent.

15-45-302. Nongame Preservation Committee.

15-45-303. Expenditures generally.

15-45-304. Purchase of land.

15-45-305. Balance of funds carried forward annually.

SECTION.

15-45-306. Costs of administration transferred to Constitutional Officers Fund and State Central Services Fund.

Effective Dates. Acts 1983, No. 475, § 6: effective for tax years on and after Jan. 1, 1984.

Acts 1987, No. 879, § 14: effective for tax years beginning on and after Jan. 1, 1988.

15-45-301. Legislative intent.

(a) The General Assembly declares that it is the public policy of the State of Arkansas to promote sound management, conservation, and public awareness of Arkansas' rich diversity of native plants and nongame animals. Many of these species, subspecies, or populations of animals and plants are rare, threatened, endangered or are of special significance to the state, and it is in the best interest of the state to provide for their conservation both for present and future generations. So, too, it is in the state's interest to provide for the protection of natural areas harboring significance or having unusual importance to the survival of Arkansas' native animals and plants in their natural environments.

(b) It is the purpose of this subchapter and § 26-51-434 [repealed] to provide a means by which the protection of nongame species of animals and native plants may be financed in part through a voluntary checkoff designation on state income tax return forms, whereby an individual taxpayer may designate a portion or all of his or her income tax refund to be withheld and contributed for the purposes set forth in this subchapter and § 26-51-434 [repealed]. It is the intent of the General Assembly that this program of income tax checkoff is supplemental to any funding and in no way is intended to take the place of funding that would otherwise be appropriated for this purpose.

History. Acts 1983, No. 475, § 1; A.S.A. 1947, § 47-901; Acts 1987, No. 879, § 12.

Publisher's Notes. Acts 1987, No. 879, § 1, provided: "The General Assembly hereby declares that it is the public policy of the State of Arkansas to promote the well-being and good health of all its citizens. The Arkansas Cancer Research Center is being built on the University of Arkansas Medical Sciences Campus for the purpose of doing research to help in the fight to eradicate cancer. The General Assembly set aside Two Million Dollars (\$2,000,000) for the proposed research center in 1985 under an agreement that provides matching funds for money donated by the private sector. In May, 1986, the Cancer Research Center received One Million Dollars (\$1,000,000) from the State. The projected cost of the four (4) story, forty thousand (40,000) square foot

building to house the center is projected to be Seven Million Dollars (\$7,000,000). Because of the critical need for private donations, this Act is necessary to provide a mechanism for the people of this State to help finance this medical center. It is the purpose of this Act to provide a voluntary checkoff designation on State income tax return forms, whereby an individual taxpayer may designate a portion or all of his income tax refund to be withheld and contributed for the purposes set forth in this Act. It is the intent of the General Assembly that this program of income tax checkoff is supplemental to any funding and in no way is intended to take the place of funding that would otherwise be appropriated for this purpose."

Acts 1987, No. 879, § 14, provided that this act shall become effective for tax years beginning on and after Jan. 1, 1988.

15-45-302. Nongame Preservation Committee.

(a) The Nongame Preservation Committee will consist of five (5) members and will include the following representatives:

- (1) The Director of the Arkansas State Game and Fish Commission;
- (2) The Director of the State Parks Division of the Department of Parks and Tourism;

(3) The Director of the Arkansas Natural Heritage Commission.

(b) The remaining two (2) members will be appointed by the Governor for three-year terms. In making the appointments, the Governor will take nominations for representatives from private conservation organizations from within the state and will appoint the two (2) committee members from the nominations received.

History. Acts 1983, No. 475, § 3; A.S.A. 1947, § 47-902.

15-45-303. Expenditures generally.

(a) All moneys contributed for Nongame Preservation Program purposes pursuant to the state income tax refund check-off system authorized by this subchapter and § 26-51-434 [repealed] and the interest earned thereon shall be expended for the purpose of protecting, preserving, and restoring the nongame resources of this state, and shall include such activities as the development and implementation of management programs, the acquisition of lands, public education, or other activities appropriate to the furtherance of the purposes of this subchapter upon appropriation therefor by the General Assembly, but for no other purpose.

(b) All state agencies are authorized to make application to the Nongame Preservation Committee for a grant from the fund to effectuate the purposes of this subchapter.

(c) No expenditure shall be made without the approval and authorization of the Governor upon the recommendation of the Nongame Preservation Committee by majority vote.

(d) Funds from this source may be used for restoring and protecting nongame animals and plants, both terrestrial and aquatic, but the highest priority shall be accorded to populations of rare, endangered, or threatened native organisms or organisms of special interest to this state.

History. Acts 1983, No. 475, § 3; A.S.A. 1947, § 47-902.

15-45-304. Purchase of land.

(a) When the purchase of lands by state agencies is considered as an appropriate strategy for the protection of certain nongame species, the lands considered shall be restricted to:

(1) Natural communities, both terrestrial and aquatic, that exhibit the highest degree of integrity and least evidence of disturbance; and

(2) Habitats of Arkansas' rarest and most severely endangered or threatened native organisms.

(b) Decisions for land purchase under this program will take into account the availability and preservation status of all Arkansas lands known to represent whatever particular value may be under consideration. In accordance with the same system of priorities, funds from this

source may be used for restoring and protecting natural communities, both terrestrial and aquatic, and populations of rare, endangered, or threatened native organisms.

History. Acts 1983, No. 475, § 3; A.S.A. 1947, § 47-902.

15-45-305. Balance of funds carried forward annually.

All balances in the Nongame Preservation Program shall be carried forward each year so that no part thereof shall revert to the General Fund of this state.

History. Acts 1983, No. 475, § 4; A.S.A. 1947, § 47-903.

15-45-306. Costs of administration transferred to Constitutional Officers Fund and State Central Services Fund.

The incremental costs of administration of the contributions, not to exceed five percent (5%) of the fund during the first fiscal year of the program and not to exceed one percent (1%) of the fund for each year after that, shall be transferred out of the fund provided in §§ 15-45-303 and 15-45-304, upon certification by the Chief Fiscal Officer of the State for credit by the Treasurer of State to the Constitutional Officers Fund and State Central Services Fund, before any funds are expended as provided in this section.

History. Acts 1983, No. 475, § 5; A.S.A. 1947, § 47-904.

CHAPTER 46

CONTROL OF PREDATORS AND PESTS

SECTION.

- 15-46-101. [Repealed.]
- 15-46-102. [Repealed.]
- 15-46-103 — 15-46-105. [Repealed.]

SECTION.

- 15-46-106. Elimination of double-crested cormorants.

Publisher's Notes. Acts 1943, No. 146, § 20, provided that nothing in the act should repeal, amend, alter, or change any preexisting acts.

Cross References. Beaver control fund, § 15-42-125.

Preambles. Acts 1939, No. 17 contained a preamble which read: "Whereas, the common gopher (commonly known as salamander) and the mole have become exceedingly destructive to much of the

farm lands of the state in destroying crop stands, by eating the newly planted seeds and also causing a large percent of the erosion of said lands by burrowing on hillsides and under terraces wherein water from heavy rains may collect, forming gullies, thereby damaging such crops and land in many thousands of dollars...."

Acts 1943, No. 146 contained a preamble which read: "Whereas, The Game and Fish Commission has been heretofore

created and its duties prescribed by law; and

"Whereas, many of the laws pertaining to game and fish and enforcements of said laws for their protection are contained in acts of the legislature running back many years; and

"Whereas, many justices of the peace and other enforcement officers do not have all the acts of Arkansas containing these laws;

"Now, therefore, the game and fish laws should be codified and this bill is offered in that purpose...."

Effective Dates. Acts 1939, No. 17, § 5: became law without Governor's signature, Jan. 26, 1939. Emergency clause provided: "This act being necessary for the public peace, health, safety and public interest an emergency is hereby declared to exist and this act shall take effect and be in force from and after the passage of this act."

Acts 1939, No. 51, § 5: approved Feb. 9, 1939. Emergency clause provided: "Whereas, hawks and/or crows are exceedingly destructive to much of the farm lands in our State by killing barn yard fowls and causing a great amount of destruction, an emergency is hereby declared and this act being necessary for the public peace, health and safety of public interest, it shall take effect and be in full force from and after its passage."

Acts 1941, No. 81, § 5: approved Feb. 20, 1941. Emergency clause provided: "Whereas, Bob cats, commonly known as wild cats, gophers and/or wolves are de-

stroying game birds and small live stock in many sections of the state, an emergency is hereby declared and this act being necessary for the public peace, health and safety, an emergency is hereby found and declared to exist and this act shall take effect and be in full force from and after its passage."

Acts 1949, No. 183, § 5: approved Feb. 28, 1949. Emergency clause provided: "Whereas, the farmers of the State of Arkansas are suffering irreparable damage from wolves destroying cattle and other livestock, and this act being necessary for the immediate preservation of the public peace, health and safety an emergency is declared to exist, and this act shall be in full force and effect from and after its passage."

Acts 1993, No. 575, § 5: Mar. 18, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that fish and minnow farming is very important to the Arkansas economy; that the cormorant is inflicting serious hardship on fish and minnow farmers in the state by killing and consuming large quantities of pond-raised fish and minnows; that there is no practical method to protect the fish and minnows from the large flocks of cormorant in the state; that this act is designed to correct this undesirable situation and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

15-46-101. [Repealed.]

Publisher's Notes. This section, concerning the Arkansas State Game and Fish Commission powers and duties, was repealed by Acts 1999, No. 1557, § 128.

The section was derived from Acts 1927, No. 160, § 17; Pope's Dig., § 5900; 1943, No. 146, § 9; A.S.A. 1947, §§ 47-112, 47-502.

15-46-102. [Repealed.]

Publisher's Notes. This section, concerning a bounty on wolves, was repealed by Acts 2005, No. 283 § 1 and Acts 2005,

No. 1962 § 72. The section was derived from Acts 1949, No. 183, §§ 1-3; A.S.A. 1947, §§ 78-1515 — 78-1517.

15-46-103 — 15-46-105. [Repealed.]

Publisher’s Notes. Former §§ 15-46-103 — 15-46-105, concerning extermination of bobcats, gophers, wolves, hawks, crows, and moles, were repealed by Acts 1999, No. 1557, §§ 129-131. The sections were derived from the following sources:

15-46-103. Acts 1941, No. 81, §§ 1-4; A.S.A. 1947, §§ 78-1509 — 78-1512.

15-46-104. Acts 1939, No. 51, §§ 1-4; 1941, No. 313, § 1; A.S.A. 1947, §§ 78-1505 — 78-1508.

15-46-105. Acts 1939, No. 17, §§ 1-4; A.S.A. 1947, §§ 78-1501 — 78-1504.

15-46-106. Elimination of double-crested cormorants.

The double-crested cormorant is hereby declared a nuisance and the Arkansas State Game and Fish Commission is requested to work with the United States Fish and Wildlife Service and the Arkansas congressional delegation to permit bona fide fish farmers and other owners of private lakes in Arkansas to eliminate depredating double-crested cormorants under such terms as may be agreed upon by the Arkansas State Game and Fish Commission and the United States Fish and Wildlife Service.

History. Acts 1993, No. 575, § 1.

CHAPTER 47

WILDLIFE RECREATION FACILITIES

SUBCHAPTER.

1. WILDLIFE RECREATION FACILITIES PILOT PROGRAM.

SUBCHAPTER 1 — WILDLIFE RECREATION FACILITIES PILOT PROGRAM

SECTION.	SECTION.
15-47-101. Title.	15-47-104. Funding.
15-47-102. Findings.	15-47-105. Reporting.
15-47-103. Wildlife Recreation Facilities Pilot Program.	

15-47-101. Title.

This subchapter shall be known and may be cited as the “Wildlife Recreation Facilities Pilot Program”.

History. Acts 2009, No. 687, § 1.

15-47-102. Findings.

The General Assembly finds:

(1) The control, management, restoration, conservation, and regulation of birds, fish, game, and wildlife resources of the State of Arkansas, including hatcheries, sanctuaries, refuges, and reservations, is vested in the Arkansas State Game and Fish Commission;

(2) The commission seeks opportunities to expand the benefit of its expertise and resources for the people of Arkansas;

(3) Arkansas is an attractive and popular tourist destination for persons who seek rejuvenation and enjoyment through the sports of wildlife and nature appreciation, including hunting and fishing;

(4) The income generated for the commission on behalf of oil and gas leases in the Fayetteville Shale has presented an unprecedented opportunity for the commission to further its wildlife conservation goals for the benefit of all Arkansans;

(5) The Department of Rural Services and the commission are interested in developing a Wildlife Recreation Facilities Pilot Program to ignite interest in the wildlife resources of Arkansas and to promote economic development in the state through the use and enjoyment of the state's abundant wildlife resources; and

(6) To further carry out the mission of the commission, a Wildlife Recreation Facilities Pilot Program should be implemented to establish criteria and construct wildlife recreation facilities, including without limitation the development of community ponds, shooting ranges, community fishing, and access areas for fishing.

History. Acts 2009, No. 687, § 1.

15-47-103. Wildlife Recreation Facilities Pilot Program.

(a) There is created a program to be known as the "Wildlife Recreation Facilities Pilot Program".

(b) The program shall be developed, implemented, and administered by the Department of Rural Services and the Arkansas Rural Development Commission with the assistance of the Arkansas State Game and Fish Commission.

(c) The purpose of the program is to:

(1) Create better access to outdoor wildlife recreational activities for Arkansans;

(2) Attract tourists for the enjoyment and utilization of wildlife sports, including hunting and fishing;

(3) Ignite interest in the wildlife resources and nature appreciation activities of Arkansas; and

(4) Promote economic development in the state through the use and enjoyment of the state's abundant wildlife resources.

(d) The department and the commission agree to work cooperatively to establish criteria and recommendations for wildlife recreation facilities, including without limitation the development of community ponds, shooting ranges, community fishing, and access areas for fishing for the enjoyment of the wildlife resources of the state by our citizens and visitors to the state who are attracted to Arkansas's abundant wildlife resources.

(e) The department and the commission agree to develop plans and review the needs and requirements for the construction and development of wildlife recreation facilities under the program.

(f) The department, with the assistance and advice of the commission, shall establish criteria for the wildlife recreation facilities by the promulgation of rules in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., for the development of wildlife recreation facilities in the program.

History. Acts 2009, No. 687, § 1.

15-47-104. Funding.

(a)(1) The Arkansas State Game and Fish Commission voluntarily agrees to make available one million dollars (\$1,000,000) for the fiscal biennium beginning July 1, 2009, and ending June 30, 2011, for the Wildlife Recreation Facilities Pilot Program for the development of wildlife recreation facilities under this subchapter from moneys that the commission has received from oil and gas leases in the Fayetteville Shale.

(2) The General Assembly recognizes that the agreement under subdivision (a)(1) of this section does not constitute:

(A) A mandate by the General Assembly;

(B) An appropriation of funds by the General Assembly; or

(C) A waiver or relinquishment by the commission of the authority vested in the commission under Arkansas Constitution, Amendment 35.

(3) Before any moneys are distributed under this section, the commission shall retain the right to approve or disapprove the release of moneys.

(4) Future funding for the program is subject to the review under subdivisions (b)(2) and (3) of this section and shall be determined by and distributed from the availability of royalties from oil and gas leases in the Fayetteville Shale that the commission receives or from other sources that are not from the commission.

(b)(1) The Department of Rural Services and the commission agree to execute a memorandum of understanding to delineate each party's participation, obligation, and cooperation in the program sufficient to fulfill the requirements of this section.

(2) The department and the commission agree to review the memorandum of understanding every two (2) years to evaluate the effectiveness and success of the program and to reexamine the need for moneys to be made available to the department to fund the development of wildlife recreation facilities.

(3) If both the commission and the department agree that the program meets or exceeds the purpose of the legislation or agree that to discontinue the program would result in an undue disruption of progress, the parties shall reexecute a memorandum of understanding under subdivision (b)(1) of this section.

(c) An agreement for funding in a memorandum of understanding under subdivision (b)(1) of this section and a distribution of money under this subchapter require the final approval of the commission.

(d) The maximum grant amount for a single project funded under the program is one hundred thousand dollars (\$100,000) per year.

History. Acts 2009, No. 687, § 1.

15-47-105. Reporting.

(a) The Arkansas State Game and Fish Commission and the Department of Rural Services shall report the status of the Wildlife Recreation Facilities Pilot Program biannually to the Game and Fish/State Police Subcommittee of the Legislative Council.

(b) The report shall evaluate whether or not the program has been successful in creating new wildlife recreation facilities and promoting wildlife conservation and management.

History. Acts 2009, No. 687, § 1.

CHAPTERS 48-54

[Reserved]

SUBTITLE 5. MINERAL RESOURCES GENERALLY

CHAPTER 55

GENERAL PROVISIONS

SUBCHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]
2. ARKANSAS GEOLOGICAL SURVEY.
3. GEOLOGICAL SURVEY.
4. LIGNITE DEVELOPMENT ACT.

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

SUBCHAPTER 2 — ARKANSAS GEOLOGICAL SURVEY

SECTION.

- 15-55-201. Creation.
- 15-55-202. Members.
- 15-55-203. Organization — Meetings.
- 15-55-204. State Geologist.
- 15-55-205. Geological assistants and engineers.
- 15-55-206. Office — Seal.
- 15-55-207. Powers.
- 15-55-208. Duties.

SECTION.

- 15-55-209. Notice to agencies of location and extent of state minerals.
- 15-55-210. Reports of investigations.
- 15-55-211. State and federal expense sharing.
- 15-55-212. Deposit of moneys into State Treasury.
- 15-55-213. Access to information.

A.C.R.C. Notes. Acts 1995, No. 1265, §§ 1-10, as amended by Acts 1997, No. 324, §§ 4, 5, and No. 385, § 5, provided: "SECTION 1. The General Assembly has determined that the duties performed and the programs administered by the Arkansas Geological Commission are closely related to those of the Arkansas Soil and Water Conservation Commission.

"SECTION 2. It is the purpose of this act to authorize the Arkansas Geological Commission at its June, 1995 meeting to, by a majority vote of its membership, enter into a voluntary merger of any or all of its programs or divisions with the Arkansas Soil and Water Conservation Commission. If the Geological Commission votes to merge any or all of its programs or divisions with the Soil and Water Conservation Commission it is further the purpose of this act that the transfer be accomplished in an expeditious, orderly and efficient manner.

"SECTION 3. (a) The merger vote shall occur at the June, 1995 meeting of the Arkansas Geological Commission and prior to that time both the Arkansas Geological Commission and the Arkansas Soil and Water Conservation Commission shall hold joint public hearings and solicit input concerning the synergies and benefits possible by the proposed merger. The Soil and Water Conservation Commission shall provide input to the Geological Commission prior to its June meeting on the Soil and Water Conservation Commission's position on the merger.

"(b) If the Geological Commission votes against the merger of any or all of its programs or divisions it shall conduct a quality management review of the programs of the Geological Commission and specifically review the location, cost and equality of the Arkansas Geology Museum and determine whether it is in the best interest of the state for the museum to remain a stand alone entity or merge with the Museum of Natural Science and History or other museum. The Geological Commission is authorized to transfer the museum and all of its duties, powers, functions, actions, assets, properties and appropriations at any time. If the Geological Commission votes to merge any or all of its programs or divisions with the Soil and Water Conservation Commission, the quality management review shall be conducted by the Soil and Water Conserva-

tion Commission on such programs or divisions. A report of the results of the quality management review shall be prepared and filed no later than July 1, 1996 with the Governor, the House and Senate Interim Committees on State Agencies and Governmental Affairs and the House and Senate Interim Committees on City, County and Local Affairs.

"SECTION 4. Both the Arkansas Geological Commission and the Soil and Water Conservation Commission shall also prepare and file no later than July 1, 1996 a report to the Governor, the House and Senate Interim Committees on State Agencies and Governmental Affairs, and the House and Senate Interim Committees on City, County, and Local Affairs regarding the benefits of the merger in the future.

"SECTION 5. In determining whether to voluntarily merge with the Arkansas Soil and Water Conservation Commission, the Arkansas Geological Commission shall take into consideration the best interest of the state and the furtherance of the obligations of the commission.

"SECTION 6. Upon a majority vote of the membership of the Arkansas Geological Commission to merge with the Arkansas Soil and Water Conservation Commission, the Arkansas Geological Commission is abolished effective July 1, 1995, and its functions, powers, duties, assets, properties and appropriations are transferred by a Type 3 transfer, as defined in Ark. Code Ann. § 25-2-106, to the Arkansas Soil and Water Conservation Commission.

"If the Geological Commission votes to transfer a portion of its programs or divisions to the Soil and Water Conservation Commission then those programs or divisions will be abolished effective July 1, 1995 and their powers, functions, duties, assets, properties and appropriations are transferred by a Type 3 transfer as defined in Ark. Code 25-2-106 to the Arkansas Soil and Water Conservation Commission.

"SECTION 7. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

"SECTION 8. If any provision of this act or the application thereof to any person or circumstance is held invalid, such

invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

"SECTION 9. All laws and parts of laws in conflict with this act are hereby repealed.

"SECTION 10. EMERGENCY. It is hereby found and determined by the General Assembly that the provisions of the act are of critical importance to preserve the efficient operation of programs that deliver services to the citizens of the State of Arkansas; and that this act is necessary for the efficient and economic operation of state government. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after passage and approval."

The merger of the Arkansas Geological Commission and the Arkansas Soil and Water Conservation Commission did not occur, and the Arkansas Geological Commission was not abolished on July 1, 1995.

References to "this subchapter" in §§ 15-55-201 through 15-55-212 may not apply to § 15-55-213, which was enacted subsequently.

Effective Dates. Acts 1907, No. 417, § 6: effective on passage.

Acts 1909, No. 348, § 7: effective on passage.

Acts 1963, No. 16 § 17: Feb 8, 1963. Emergency clause provided: "It has been found that notwithstanding the fact that the Commission will not have the functions performable by it hereunder until April 1, 1963, it is necessary that immediate action be taken by the Governor to appoint, and by the Senate to confirm the appointment of, the members of the Commission in order that the Commission may organize and begin to prepare its plan of operations so that there may be no disruption of service on and after that date, and that only by the immediate operation of this act may such condition be obviated. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage and approval."

Acts 1975 (Ex. Sess., 1976), No. 1035, § 3: Jan. 27, 1976. Emergency clause provided: "It is hereby found and determined by the Seventieth General Assembly, meeting in Extended Session, that the standardization of mileage reimbursement for members of the state's Boards and Commissions will alleviate many discrepancies and inequities in existing laws and will allow such members to receive travel reimbursement commensurate with that paid to state employees. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 862, § 3: Apr. 13, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of the case *Ricarte v. State*, CR 86-31, a question has arisen over the validity of Act 1035 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it

shall become effective on the date the last house overrides the veto.”

Acts 2001, No. 1417, § 12: Apr. 9, 2001. Emergency clause provided: “It is found and determined by the General Assembly that the fiscal year begins July 1, and it is efficient to establish the Division of Land Surveys within the Office of the Commissioner of State Lands on the same date as the fiscal year begins. If the division were transferred at a later date, the budget for the Arkansas Geological Commission and the Office of the Commissioner of State Lands would be confusing and irreparably

harmful. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

15-55-201. Creation.

There is created and established at the seat of government of this state the “Arkansas Geological Survey”.

History. Acts 1963, No. 16, § 1; A.S.A. 1947, § 9-400; Acts 2007, No. 129, § 2.

A.C.R.C. Notes. Acts 2007, No. 129, § 1, provided:

“Renaming the Arkansas Geological Commission.

“(a) The Arkansas Geological Commission is renamed the Arkansas Geological Survey.

“(b) The Arkansas Code Revision Commission shall replace all references to the ‘Arkansas Geological Commission’ in the Arkansas Code with ‘Arkansas Geological Survey’”.

Publisher’s Notes. Acts 1945, No. 138, abolished the State Geological Commission and transferred its duties to the Arkansas Resources and Development Commission’s Division of Geology. Acts 1955, No. 408, transferred those duties to the Arkansas Geological and Conservation

Commission. Acts 1963, No. 16, §§ 10, 11, abolished the Geological and Conservation Commission and transferred to the Arkansas Geological Commission the duties of the Arkansas Geological and Conservation Commission and the Geological Survey of Arkansas as well as the administration of Acts 1907, No. 417; Acts 1909, No. 348; and Acts 1923, No. 573.

Acts 1971, No. 38, § 16, transferred the duties of the Arkansas Geological Commission to the Department of Commerce. However, Acts 1983, No. 691, abolished the Department of Commerce, and § 8 of that act provided that the Arkansas Geological Commission should function as an independent agency in the same manner as it had functioned prior to the transfer.

Amendments. The 2007 amendment substituted “the ‘Arkansas Geological Survey’” for “a commission to be known as the ‘Arkansas Geological Commission.’”

15-55-202. Members.

(a) The Arkansas Geological Survey shall consist of seven (7) members, residents and electors of this state, to be appointed by the Governor, by and with the advice and consent of the Senate.

(b) Each congressional district shall be represented by membership on the survey.

(c) Terms of office shall commence on January 15 following the expiration date of the prior term and shall end on January 14 of the seventh year following the year in which the term commenced.

(d) Any vacancies arising in the membership of the survey for any reason other than expiration of the regular terms for which the members were appointed shall be filled by appointment by the Governor, to be thereafter effective until the expiration of the regular terms, subject, however, to the confirmation of the Senate when it is next in session.

(e) Before entering upon his or her duties, each member of the survey shall take and subscribe, and file in the office of the Secretary of State, an oath to support the Constitution of the United States and the Constitution of the State of Arkansas, and to faithfully perform the duties of the office upon which he or she is about to enter.

(f) Members of the survey shall receive no pay for their services but may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1963, No. 16, §§ 2-5; 1975 (Ex. Sess., 1976), No. 1035, § 1; A.S.A. 1947, §§ 6-616, 9-400.1 — 9-400.4; reen. Acts 1987, No. 862, § 1; 1997, No. 250, § 111.

A.C.R.C. Notes. Part of this section was reenacted by Acts 1987, No. 862, § 1.

Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

15-55-203. Organization — Meetings.

(a) The Arkansas Geological Survey shall from time to time select from its membership a chair and a vice chair.

(b) The State Geologist, provided for in § 15-55-204, shall be ex officio secretary of the commission, but shall have no vote on matters coming before it.

(c)(1) The survey shall adopt, and may modify, rules for the conduct of its business and shall keep a record of its transactions, findings, and determinations, which record shall be public.

(2) The rules shall provide for regular meetings and for special meetings at the call of the chair, or the vice chair if he or she is, for any reason, the acting chair, either at his or her own instance or upon the written request of at least four (4) members.

(d) A quorum shall consist of not less than four (4) members present at any regular or special meeting, and the affirmative vote of such number shall be necessary for the disposition of any business.

(e) The commission shall meet at such times and places as in each instance may suit the survey's convenience, and all such meetings shall be open to the public.

History. Acts 1963, No. 16, § 7; A.S.A. 1947, § 9-400.6.

RESEARCH REFERENCES

Ark. L. Rev. Watkins, Open Meetings Under the Arkansas Freedom of Information Act, 38 Ark. L. Rev. 268.

15-55-204. State Geologist.

(a) The State Geologist shall be appointed by and serve at the pleasure of the Governor.

(b) He or she shall:

(1) Be charged with the duty of administering the provisions of this subchapter and the rules, regulations, and orders established thereunder;

(2) Be custodian of all property held in the name of the Arkansas Geological Survey, and shall be, ex officio, the disbursing agent of all funds available for its use; and

(3) Furnish bond to the state, with corporate surety thereon, in the penal sum of ten thousand dollars (\$10,000), conditioned that he or she will faithfully perform his or her duties of employment and properly account for all funds received and disbursed by him or her. An additional disbursing agent's bond shall not be required of the State Geologist. The bond so furnished shall be filed with the Secretary of State, and an executed counterpart thereof shall be filed with the Auditor of State.

(c) The commission, by resolution duly adopted, may delegate to the State Geologist any of the powers or duties vested in or imposed upon it by this subchapter, and the delegated powers and duties may be exercised by the State Geologist in the name of the commission.

History. Acts 1963, No. 16, §§ 8, 9; A.S.A. 1947, §§ 9-400.7, 9-400.8.

A.C.R.C. Notes. The operation of subdivision (a)(3) of this section was suspended by adoption of a self-insured fidelity bond program for state officers,

officials, and employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. Subdivision (a)(3) of this section may again become effective upon cessation of coverage under that program. See § 21-2-703.

15-55-205. Geological assistants and engineers.

(a) It shall be the duty of the State Geologist, by and with the approval of the Arkansas Geological Survey, to appoint trained geological assistants, engineers, and others efficient in the arts and sciences as may be necessary to completely carry on the investigations undertaken.

(b) The State Geologist, assistants, and engineers, are directed to go into any mine or other place, where it is thought necessary by the State Geologist to go, in executing the directions of the commission.

History. Acts 1909, No. 348, § 4, p. 1020; C. & M. Dig., § 4975; Pope's Dig., § 12224; A.S.A. 1947, § 9-401.1.

15-55-206. Office — Seal.

(a) The officer or commission having custody of the public buildings shall assign to the Arkansas Geological Survey suitable office space in the State Capitol Building, or other office building located on the State Capitol grounds, with the necessary conveniences for the transaction of its business and the safekeeping of its records.

(b) The Governor shall procure an official seal for the use of the commission.

History. Acts 1963, No. 16, § 6; A.S.A. 1947, § 9-400.5.

15-55-207. Powers.

The Arkansas Geological Survey shall also have the authority to:

(1)(A) Enter into cooperative agreements with the United States Geological Survey of the Department of the Interior in relation to programs concerning quality of water, occurrence of ground water, stream gauging, mineral investigations, topographic mapping, and other federal programs relating to the functions performable by the commission;

(B) Make copies of the reports prepared under those programs available to other state agencies, including, but not limited to, those agencies whose principal functions relate to industrial development and water and soil conservation;

(2) Receive and expend any moneys arising from federal means, grants, contributions, gratuities reimbursements, or loans payable or distributable to the State of Arkansas by the United States, or by any of its agencies or instrumentalities, pursuant to any congressional act or rule or regulation of the agency or instrumentality enacted or promulgated for or on account of any functions performable by the commission. It shall likewise receive any contributions, grants, or gratuities donated by private persons, associations, or corporations, for or on account of any of the functions aforesaid. The Chief Fiscal Officer of the State shall prescribe rules for handling the moneys;

(3) Contract and be contracted with; and

(4) Take other action, not inconsistent with law, as it deems necessary or desirable to carry out the purposes and intent of this subchapter.

History. Acts 1963, No. 16, § 12; A.S.A. 1947, § 9-400.11.

15-55-208. Duties.

(a) It shall be the duty of the commission to direct the State Geologist, in cooperation with the United States Geological Survey, to:

(1) Investigate, or to have investigated, such of the natural resources of the state, consisting of the available waterpower of the streams, the clays of the state as related to their adaptability to the various purposes

for which clays are utilized, the cement materials of the state, the road materials of the state, and such other minerals and economic geologic products, as it may be deemed practicable and advisable by the commission to have investigated; and

(2) Prepare or have prepared topographic maps deemed advisable.

(b) The Arkansas Geological Survey may direct the State Geologist to:

(1) Make or have made investigations deemed advisable relating to the conservation of exhaustible natural resources;

(2) In cooperation with the United States Geological Survey, make investigations deemed advisable relating to the safety of miners and mine operations; and

(3) Adopt measures deemed practicable to assist mine operators in preventing explosions and give relief in case explosions occur.

History. Acts 1907, No. 417, § 2, p. 1103; 1909, No. 348, § 2, p. 1020; C. & M. Dig., § 4973; Pope's Dig., § 12222; A.S.A. 1947, § 9-401.

Cross References. Duties of Inspector of Mines, § 11-7-201 et seq.

Reports made to State Highway Commission, § 27-65-128.

15-55-209. Notice to agencies of location and extent of state minerals.

From time to time, the Arkansas Geological Survey shall bring to the attention of the appropriate federal agencies, state and local industrial development agencies, and industrial interests the location and extent of minerals in the state which may be of value to, and beneficial in, any programs of national defense or the development of industry.

History. Acts 1963, No. 16, § 13; A.S.A. 1947, § 9-400.12.

15-55-210. Reports of investigations.

(a) It shall be the duty of the State Geologist to make reports to the Arkansas Geological Survey as necessary to a complete understanding of the results obtained from investigations undertaken and to perform other duties as usually belong to the Office of State Geologist.

(b) The reports shall be accompanied by maps, sections, and other illustrations as necessary to a complete understanding.

(c) The cost of publishing the reports shall be paid out of money appropriated for public printing.

(d) The number of copies of each report shall be four thousand (4,000). The members of the General Assembly, the survey, and the State Geologist shall each have twenty (20) copies. One (1) copy shall be sent to each of the state universities of the country. One hundred (100) copies shall be sent to the Department of Geology, University of Arkansas at Fayetteville, for exchange with other state geological surveys. The remainder shall be distributed by the State Geologist, without charge, upon application and the receipt of the necessary postage or expressage.

History. Acts 1907, No. 417, § 3, p. 1103; 1909, No. 348, § 3, p. 1020; C. & M. 1947, § 9-403. Dig., § 4974; Pope's Dig., § 12223; A.S.A. 1947, § 9-403.

15-55-211. State and federal expense sharing.

(a) The State of Arkansas shall pay the portion of the field and traveling expenses, including salaries, as agreed upon between the Arkansas Geological Survey and the United States Geological Survey.

(b) The full and complete results of the surveys shall be available for publication in the state reports.

(c) The expense of the office work for the state reports shall be borne by the state.

History. Acts 1907, No. 417, § 4, p. 1103; 1909, No. 348, § 5, p. 1020; C. & M. 1947, § 9-404. Dig., § 4977; Pope's Dig., § 12226; A.S.A. 1947, § 9-404.

15-55-212. Deposit of moneys into State Treasury.

The Arkansas Geological Survey shall deposit all moneys received from the sale of its publications and from other sources in the State Treasury to the credit of the fund from which the commission is operated, unless provisions shall have otherwise been made by law.

History. Acts 1963, No. 16, § 14; A.S.A. 1947, § 9-400.13.

15-55-213. Access to information.

The Arkansas Geological Survey and the Department of Information Systems shall grant access to and provide information determined by the Office of the Commissioner of State Lands to be necessary to successfully accomplish its mission.

History. Acts 2001, No. 1417, § 8.

55-212 may not apply to this section which was enacted subsequently.

A.C.R.C. Notes. References to "this subchapter" in §§ 15-55-201 through 15-

SUBCHAPTER 3 — GEOLOGICAL SURVEY

SECTION.

15-55-301. Purposes.

15-55-302. Free access to public records.

SECTION.

15-55-303. Mineral discoveries — Notice.

15-55-301. Purposes.

(a) The State Geologist shall, upon consultation with and approval of the Governor, establish and equip a chemical laboratory for the carrying on of this work and appoint suitable assistants; the State Geologist and his or her assistants are to constitute the geological corps whose duty it shall be to make a geological survey of the sections of this state he or she deems necessary and proper to ascertain the mineral properties of the state.

(b) This survey shall have for its object:

(1)(A) An examination of the geological structure, including the dip, magnitude, order, and relative portions of the several strata, their ore-bearing qualities, or usefulness in the production of oil, gas, water, building stone, road materials, or other valuable minerals; and

(B) The accessibility of the geological structure for mining or manufacture and the most economic means for their production;

(2) An examination of the various soils of the state for the determination of their chemical constituency and agricultural adaptability, with recommendations for the preservation and improvement of their fertility by the addition of other materials, such as the phosphate rocks, limestones, chalks, marls, and green sands found in various parts of the state, with the view of ascertaining their value for use on deficient soils;

(3) An investigation of the available water power of the streams of this state and of the problems of flood control and land drainage, so that information will be available to citizens of the state that will enable them to develop the hydroelectric possibilities and reclaim the rich agricultural lands along these waterways;

(4) To investigate methods of mining and mineral production, and devise means for the conservation of the natural resources and to make suggestions for safeguarding the lives of miners and preventing explosions and other accidents, cooperating in this work with the State Mine Inspector and the Oil and Gas Commission;

(5) To obtain records of the names and addresses of all individuals, companies, or corporations engaged in mineral production in the state, together with information as to the capacity, output, and holdings of their plants, amount of capital invested, number of persons employed, value of products, and other data indicative of the business of the establishments;

(6) To obtain a list of the owners of undeveloped mineral properties and information as to character of mineral, extent of deposit, location, convenience to transportation, facilities for working, and probable cost of development, placing this list at the disposal of persons seeking investments in mineral properties;

(7) To prepare an accurate geological map of the state, showing by colors, symbols, and other appropriate means, the exposed or surface formations, topographic contours, soil types, physical features, and areas of mineral-bearing ores, with comprehensive data concerning the stratification of the rocks and underground conditions for publication with the reports of the survey;

(8) To examine and analyze specimens of minerals submitted by citizens of this state and report upon their intrinsic worth or economic value and to collect from various sources the names of manufacturers and others who use, or may be in the market for, mineral products, and to furnish these names to owners of mineral products and owners of mineral deposits or property who seek to develop their mineral deposits or property;

(9) To obtain from the county clerks of the various counties when oil or gas wells may be drilled, or from the driller of the well and other

sources, the records or logs, which the statutes provide shall be kept of the wells and copies filed with the county clerk, keeping this data in a convenient form so that it may be accessible to any person seeking information regarding the underground structure of the state; and further, the State Geologist shall correlate the data obtained from these logs and other sources and construct therefrom maps showing the relative positions of various geological formations, and the depth of water, gas, and oil-bearing strata, and other information as would be helpful in a study of the geology of the regions where wells have been drilled;

(10) To cooperate with the Revenue Division of the Department of Finance and Administration in investigation for tax purposes and inventorying and appraising all mining properties held under private ownership or control; and

(11) To make a report on or before the first Monday in December of each year of the results and progress of the survey, accompanied by maps, profiles, and drawings as necessary to explain the survey. The Governor may cause the report to be printed and distributed or shall lay it before the General Assembly for its consideration; provided, that, if the public interest requires, special reports may be issued showing the results of geological investigation.

History. Acts 1923, No. 573, § 2; Pope's Dig., § 12228; A.S.A. 1947, § 9-405.

15-55-302. Free access to public records.

(a) The work of the geological survey shall commence as soon after the appointment of the State Geologist and his or her assistants as is practical.

(b) The geological corps shall have access at all times to the field notes and maps of the Office of Commissioner of State Lands, and to the records and reports of the State Mine Inspector, the Oil and Gas Commission, the county clerk of any county, or to the public record of any state department or county official without the payment of any fee.

History. Acts 1923, No. 573, § 3; Pope's Dig., § 12229; A.S.A. 1947, § 9-406.

15-55-303. Mineral discoveries — Notice.

(a) When at any time during the progress of the survey the State Geologist or his or her assistants shall discover any considerable deposits of minerals, metals, ores, clays, oils, gas, coal, or anything else of value, situated upon lands of any citizen of the state, he or she shall immediately notify the owner of the discovery.

(b) Should the discovery be upon land belonging to the state, he or she shall at once and without delay notify the Governor thereof, and the Governor upon receipt of notice shall immediately cause the lands to be

withdrawn from sale or donation until otherwise provided by the General Assembly.

(c) Withdrawal from sale by the Governor shall be by proclamation directed to the Commissioner of State Lands and shall be published in at least one (1) newspaper of general state circulation.

History. Acts 1923, No. 573, § 4; Pope’s Dig., § 12230; A.S.A. 1947, § 9-407.

SUBCHAPTER 4 — LIGNITE DEVELOPMENT ACT

SECTION.	SECTION.
15-55-401. Title.	15-55-404. Participation in other grant programs.
15-55-402. Findings.	
15-55-403. Arkansas Lignite Resources Pilot Program.	15-55-405. Reporting.

15-55-401. Title.

This subchapter shall be known and may be cited as the “Lignite Development Act”.

History. Acts 2007, No. 641, § 1.

15-55-402. Findings.

- The General Assembly finds:
- (1) Lignite in Arkansas is a vast energy resource that is virtually untapped and is easily extracted;
 - (2) Lignite could be used in a variety of ways, including:
 - (A) Blending it with fuel products to augment imported coal that is currently used to generate electricity in Arkansas power plants;
 - (B) Using it as a primary fuel source for newly constructed electric power generating plants; and
 - (C) Using it as a primary fuel source for the generation of synthetic natural gas, gasoline, and other economically important by-products;
 - (3) The Arkansas Geological Survey, formerly known as the Arkansas Geological Commission, is interested in developing a research agreement with academic institutions of higher education or industry partners, or both, for purposes of pursuing a research program on Arkansas lignite and lignite’s commercial and economic contributions to the state;
 - (4) In the United States, approximately seventy-nine percent (79%) of lignite coal is used to generate electricity, thirteen and five-tenths percent (13.5%) is used to generate synthetic natural gas, and seven and five-tenths percent (7.5%) is used to produce fertilizer products;
 - (5) Currently, Arkansas is not utilizing its lignite resources; whereas, Texas, Mississippi, Louisiana, and North Dakota regard lignite as an important energy source for electrical power generation or synthetic fuels production; and

(6) With the creation of strategic partnerships, Arkansas can truly begin a new era in lignite-driven energy and economic development.

History. Acts 2007, No. 641, § 1; 2009, subdivided (2), and made minor stylistic changes.

Amendments. The 2009 amendment

15-55-403. Arkansas Lignite Resources Pilot Program.

(a) There is created a program to be known as the “Arkansas Lignite Resources Pilot Program”.

(b) The program shall be developed and administered by Southern Arkansas University, the Arkansas Geological Survey, and the Arkansas Economic Development Commission.

(c) The purpose of the program is to:

(1) Examine the feasibility of the use of lignite as a potential energy source;

(2) Explore and utilize lignite as an energy resource, including without limitation a synthetic fuels-based research program;

(3) Develop public and private partnerships with other entities to develop the untapped energy resource of lignite to stimulate Arkansas’s economy; and

(4) Develop practical applications for the use of lignite resources as an alternative energy source.

History. Acts 2007, No. 641, § 1.

A.C.R.C. Notes. Acts 2007, No. 1602, § 1, provided: “Department of Economic Development renamed Arkansas Economic Development Commission.

“(a)(1) The Department of Economic Development, as it is referred to or empowered through the Arkansas Code, is renamed.

“(2) In its place, the Arkansas Economic Development Commission is established, succeeding to the general powers and responsibilities previously assigned to the Department of Economic Development.

“(3) The Director of the Department of Economic Development shall identify and revise all interagency agreements, financial instruments, funds, and other neces-

sary legal documents in order to effect this change.

“(b) Nothing in this act shall be construed as impairing the powers and authority of the Department of Economic Development before the effective date of the name change.

“(c) Appropriations authorized for the personal services and operating expenses of the Department of Economic Development may be utilized for the personal services and operating expenses of the Arkansas Economic Development Commission.”

Acts 2007, No. 1602, § 7, provided: “The Arkansas Code Revision Commission shall make all changes in the Arkansas Code necessary to effectuate the intent of this act.”

15-55-404. Participation in other grant programs.

The Arkansas Lignite Resources Pilot Program may participate in federal, state, or industry grant opportunities that are available for the program.

History. Acts 2007, No. 641, § 1.

15-55-405. Reporting.

Representatives from Southern Arkansas University, the Arkansas Geological Survey, and the Arkansas Economic Development Commission shall report the status of the Arkansas Lignite Resources Pilot Program periodically to the Legislative Council and the Joint Committee on Energy.

History. Acts 2007, No. 641, § 1.

A.C.R.C. Notes. Acts 2007, No. 1602, § 1, provided: “Department of Economic Development renamed Arkansas Economic Development Commission.

“(a)(1) The Department of Economic Development, as it is referred to or empowered through the Arkansas Code, is renamed.

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Acts 2007, No. 1602, § 7, provided: “The Arkansas Code Revision Commission shall make all changes in the Arkansas Code necessary to effectuate the intent of this act.”

CHAPTER 56

MINERAL LANDS AND INTERESTS

SUBCHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]
2. MINING CLAIMS ON PUBLIC LANDS.
3. LEASES GENERALLY.
4. LEASES BY LIFE TENANTS.
5. RAILWAYS ON MINERAL LANDS.

RESEARCH REFERENCES

ALR. Reversion of mineral estates for abandonment or nonuse. 16 A.L.R.4th 1029.

CASE NOTES

Previous Errors.

Errors in earlier decree regarding royalties and conveyance of mineral interests, which decree was not appealed, could

not be relitigated or corrected by subsequent purchasers of those mineral interests. *Phelps v. Justiss Oil Co.*, 291 Ark. 538, 726 S.W.2d 662 (1987).

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

SUBCHAPTER 2 — MINING CLAIMS ON PUBLIC LANDS

SECTION.

15-56-201. Recording mining claim notices.

15-56-202. Recording fees.

15-56-203. Affidavit of assessment work.

SECTION.

15-56-204. Establishment of possessory right to claim — Right of action against claimant.

15-56-205. Indexed plat book.

Effective Dates. Acts 1895, No. 88, § 4: effective on passage and not to affect validity of locations made prior to passage under local laws.

Acts 1901, No. 177, § 5: effective on passage.

RESEARCH REFERENCES

Am. Jur. 54 Am. Jur. 2d, Mines, § 25 et seq.; § 120 et seq.

C.J.S. 58 C.J.S., Mines, § 4 et seq.

15-56-201. Recording mining claim notices.

In every county in this state in which lands containing minerals still belong to the United States Government, the recording of mining claim notices of all kinds may be done with the ex officio recorders of the various counties in which the lands are situated.

History. Acts 1895, No. 88, § 1, p. 116; C. & M. Dig., § 7326; Pope's Dig., § 9382; A.S.A. 1947, § 52-101.

15-56-202. Recording fees.

(a) The fees for recording mining location notices shall be one dollar (\$1.00) for notice, to be paid in United States currency, one-half (½) of which shall go into the county treasury to the credit of the record fund.

(b) The fees for recording all other mining notices shall be the same as allowed by law for recording deeds.

History. Acts 1895, No. 88, § 2, p. 116; C. & M. Dig., § 7327; Pope's Dig., § 9383; A.S.A. 1947, § 52-102.

Cross References. Recorder's fees, § 21-6-306.

15-56-203. Affidavit of assessment work.

On or before December 31 of any year in which the time in which the assessment work or improvement required by law to hold the claim expires, the owner of the claim or, in his or her absence, his or her agent

or the party who was in charge of the work for the claimant may make an affidavit and file it for record in the recorder’s office in the county in which the claim is situated. This affidavit shall be, in substance, as follows:

“State of Arkansas)
County of)

....., being duly sworn, deposes and says that at least dollars worth of work or improvements were performed or made upon (here describe claim) situated in Mining District, County of and State of Arkansas, between the day of and the day of A. D., and that such expenditure was made by or at the expense of, owners of said claim, for the purpose of complying with the law for holding the claim.

(Signature)
(Jurat) ”

The affidavit when so filed and recorded, shall be prima facie evidence of the performance of such labor or the making of such improvements.

History. Acts 1901, No. 177, § 2, p. 330; C. & M. Dig., § 7330; Pope’s Dig., § 9386; A.S.A. 1947, § 52-105.

15-56-204. Establishment of possessory right to claim — Right of action against claimant.

(a) When any owner or claimant of any mining claim on any of the lands subject to location as mining claims in this state under the laws of the United States shall have had possession of a claim for a period of three (3) years and shall have performed the necessary amount of annual labor or improvement to hold the claim, as required by law for the time period, such possession and labor or improvement shall be sufficient to establish his or her possessory right to the claim.

(b) However, if the claimant shall have performed the necessary work for one (1) year during the specified three-year time period and shall have resumed work at any time before the rights of others intervene, then he or she shall be entitled to the possessory right to the claim.

(c) No person shall maintain an action against a claimant for the recovery of a mining claim unless the action is commenced within one (1) year after his or her right of action accrues.

History. Acts 1901, No. 177, § 1, p. 330; C. & M. Dig., § 7329; Pope’s Dig., § 9385; A.S.A. 1947, § 52-104.

15-56-205. Indexed plat book.

(a)(1) It shall be the duty of the recorder of any county in which mining location notices and proof of labor performed are recorded to keep a suitable bound plat book properly arranged, showing all the legal subdivisions affected by notices, in which he or she shall keep a complete index of all instruments recorded, showing the number of the book and page on which they are recorded. This index shall be kept up to date of recording.

(2) Any recorder who shall neglect, refuse, or fail to keep the index provided for in this subsection shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100).

(b) The recorder shall make the plat book available for the free use of all miners who may wish to examine it.

History. Acts 1895, No. 88, § 3, p. 116; §§ 9384, 9387, 9388; A.S.A. 1947, §§ 52-1901, No. 177, §§ 3, 4, p. 330; C. & M. 103, 52-106, 52-107. Dig., §§ 7328, 7331, 7332; Pope's Dig.,

SUBCHAPTER 3 — LEASES GENERALLY

SECTION.

- 15-56-301. Multiple owner authority to lease mineral lands — Mineral defined.
- 15-56-302. Summons — Validity of lessee's title.
- 15-56-303. Parties in interest — Right to appear or intervene.
- 15-56-304. Petition to lease or operate — Parties defendant.
- 15-56-305. Receiver — Disposition of proceeds.
- 15-56-306. Reporting and approval of leases.

SECTION.

- 15-56-307. Sale of land or mineral rights — Lease unaffected.
- 15-56-308. Discharge of receiver — Accounting.
- 15-56-309. Execution of agreements subsequent to discharge of receiver.
- 15-56-310. In rem proceedings against unleased interest in minerals.
- 15-56-311. Failure of lessee to report output.

Cross References. Mineral leases, § 15-73-201 et seq.

Effective Dates. Acts 1911, No. 159, § 2: effective on passage.

Acts 1975, No. 126, § 3: Feb. 7, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that some uncertainty exists as to the meaning of the term 'mineral' as used

herein, and that the development of the mineral resources of this state is being thereby retarded by such uncertainty of meaning. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

C.J.S. 58 C.J.S., Mines, § 164 et seq.
U. Ark. Little Rock L.J. Wright, The

Arkansas Law of Oil and Gas, 9 U. Ark. Little Rock L.J. 223.

15-56-301. Multiple owner authority to lease mineral lands — Mineral defined.

(a) Whenever any mineral lands in fee, or severed mineral rights and interests in, on, and under any lands situated in the State of Arkansas shall be owned, or held by two (2) or more persons, firms, or corporations in joint tenancy, in common or in coparceny, and there shall be no operation thereof under existing valid mining and operating leases, any one (1) or more of the owners or holders of mineral lands in fee, or severed mineral interests, in, on, and under the land, or the lessees of any one (1) or more of any such mineral owners may have the lands or mineral interests, leased and operated, in the manner provided in this subchapter.

(b) The word “mineral” as used herein shall include oil, gas, asphalt, coal, iron, zinc, lead, cinnabar, bauxite, and salt water whose naturally dissolved components or solutes are used as a source of raw materials for bromine and other products derived therefrom in bromine production.

History. Acts 1937, No. 220, § 1; Pope’s Dig., § 11195; Acts 1963, No. 85, § 1; 1975, No. 126, § 1; A.S.A. 1947, § 52-201.

CASE NOTES**Salt Water.**

Since salt water is a mineral under Arkansas law, it is reasonable to treat damages for the taking of salt water in the same manner as the taking of other minerals such as coal. *Young v. Ethyl Corp.*,

581 F.2d 715 (8th Cir. 1978), cert. denied, 439 U.S. 1089, 99 S. Ct. 871, 59 L. Ed. 2d 56 (1979).

Cited: *Davis v. Schimmel*, 252 Ark. 1201, 482 S.W.2d 785 (1972).

15-56-302. Summons — Validity of lessee’s title.

(a) Summons shall be issued and served as in other cases in chancery.

(b) All persons, if any, whose names or whereabouts are stated in the petition to be unknown to the plaintiff shall be deemed and taken as defendants by the name or designation of “all whom it may concern”, and such persons may be constructively summoned, as provided in § 16-58-130. However, the validity of the lessee’s title under the lease, when approved by the court, shall not thereafter be subject to attack by any person whatsoever, including, but not limited to, nonresidents, minors, or other incompetents, except by direct appeal in the manner provided by law.

History. Acts 1937, No. 220, § 3; Pope’s Dig., § 11197; Acts 1963, No. 85, § 3; A.S.A. 1947, § 52-203.

CASE NOTES

Construction.

The language in this section barring any attack upon a lease entered into by a receiver "except by direct appeal in the manner provided by law" must be construed as meaning "by direct attack," thus including a motion to set aside the orders of the court filed by nonresident defen-

dants who had not been properly served by constructive notice of the proceedings, for to hold otherwise would clearly require that this section be held unconstitutional as in violation of the due process clause of U.S. Const., Amend. 14. *Davis v. Schimmel*, 252 Ark. 1201, 482 S.W.2d 785 (1972).

15-56-303. Parties in interest — Right to appear or intervene.

Any persons having or claiming an interest in mineral lands in fee, or in any segregated mineral rights, not made a party in the petition may appear and unite or intervene in the cause.

History. Acts 1937, No. 220, § 4; Pope's Dig., § 11198; Acts 1963, No. 85, § 4; A.S.A. 1947, § 52-204.

15-56-304. Petition to lease or operate — Parties defendant.

Any owners, partners, or corporate shareholders, or parties as set forth in § 15-56-301 desiring the leasing and operating of mineral lands or mineral interests shall file, in the circuit court in the county in which the mineral lands or mineral interests or the greater part thereof lie, a written petition describing the lands under which the mineral interests exist and shall make as parties defendant owners of the various interests or their lessee, if any, in the mineral lands or mineral rights in, on, and under the lands. The petition shall state, as far as known, the amount of interest held by each, with a prayer that the unleased interests or any part thereof or certain portions of the mineral lands and interests be leased and that the money derived from leases be paid to the owners as the court may direct. Any lessor whose lessee is either a plaintiff or defendant shall not be a necessary party to the suit.

History. Acts 1937, No. 220, § 2; Pope's Dig., § 11196; Acts 1963, No. 85, § 2; A.S.A. 1947, § 52-202.

15-56-305. Receiver — Disposition of proceeds.

(a) Upon the filing of the petition, the circuit court shall appoint a receiver, who shall be authorized to negotiate for and to execute, acknowledge, and deliver a lease on mineral lands or severed mineral interests for a cash, commodity in kind, or tonnage royalty, as is the customary manner, and terms for the product, for the best interest of, or compensation to, the parties holding thereunder, and to collect, divide, and pay over the proceeds, secured for the leases, pro rata to and among owners, as their interests may appear.

(b) Any rents, bonus money, royalties, or other proceeds that may accrue to any unknown persons shall be paid by the receiver into the registry of the clerk of the court to be held by the clerk, and any bond of the receiver shall be eliminated thereby.

History. Acts 1937, No. 220, § 6; Pope's Dig., § 11200; Acts 1963, No. 85, § 6; A.S.A. 1947, § 52-206.

CASE NOTES

Pendency of Suit.

Although this section authorizes the appointment of a receiver to negotiate a lease upon the filing of a petition, appointment and negotiation are ultimate remedies and the pendency of a suit is an

absolute prerequisite to the appointment of a receiver and, unless made in a pending action, the court is without jurisdiction. *Davis v. Schimmel*, 252 Ark. 1201, 482 S.W.2d 785 (1972).

15-56-306. Reporting and approval of leases.

(a) A lease executed by a receiver, when acknowledged and delivered, shall be binding on all parties subject only to approval or rejection by the court as herein provided.

(b) Not later than thirty (30) days after making the lease, the receiver shall report the making of the lease to the court. If it shall appear to the court that the consideration for the lease was fair and equitable at the time the consideration was made, the court shall approve the consideration and the lease shall be binding as though executed by the various owners and their spouses.

History. Acts 1937, No. 220, § 7; Pope's Dig., § 11201; Acts 1963, No. 85, § 7; A.S.A. 1947, § 52-207; Acts 1995, No. 1296, § 56.

15-56-307. Sale of land or mineral rights — Lease unaffected.

The lease executed by the receiver under the approval of the court as provided in § 15-56-306 shall not terminate with the sale of the lands or mineral interests therein, thereon, or thereunder. Any person purchasing or holding thereafter shall take the land or mineral rights subject to the lease executed by the receiver pursuant to § 15-56-306.

History. Acts 1937, No. 220, § 9; Pope's Dig., § 11203; Acts 1963, No. 85, § 9; A.S.A. 1947, § 52-209.

15-56-308. Discharge of receiver — Accounting.

Upon any lease or contract being executed by the receiver appointed by the circuit court as provided in this subchapter, and upon the lease or contract's being reported, and approved by the court, and all considerations, if any, being accounted for by the receiver, with any money left in the hands of the receiver being paid into the registry of the court, the receiver shall be discharged, and the lessee or assigns shall

thereafter account to the respective owners for all royalties arising or accruing under the term of the lease or contract, with payment to be made by the lessee or operator for any unknown persons into the registry of the court as the interest of the persons may appear.

History. Acts 1937, No. 220, § 13; Pope's Dig., § 11207; Acts 1963, No. 85, § 13; A.S.A. 1947, § 52-213.

15-56-309. Execution of agreements subsequent to discharge of receiver.

After discharge of the receiver, if it should become necessary for unit operating agreements, royalty unitization agreements, royalty pooling agreements, field unitization and repressure agreements, or other agreements and contracts relative thereto to be executed, the clerk of the court is authorized to petition the circuit court for the authority to execute the agreements, with notice to such persons, if any, as the court may direct.

History. Acts 1963, No. 85, § 15; A.S.A. 1947, § 52-213.1.

15-56-310. In rem proceedings against unleased interest in minerals.

The proceedings provided for in this subchapter shall be for all purposes an action in rem against the unleased interest in minerals as described in this subchapter.

History. Acts 1963, No. 85, § 14; A.S.A. 1947, § 52-213.2.

15-56-311. Failure of lessee to report output.

Any person, firm, or corporation leasing lands in this state under written contracts providing for a royalty to be paid the lessor for ore deposits or minerals taken out of or off of the land, or any officer, agent, or employee of the lessee, who, with the intent to defraud the lessee out of any part of the royalty, fails, neglects, or refuses to report the true amount or quantity of ore, deposits, or minerals taken from the lands, or who conceals the true amount so taken, or who falsely reports the amount so taken shall be deemed guilty of a felony and upon conviction shall be imprisoned in the penitentiary for not less than one (1) year nor more than five (5) years.

History. Acts 1911, No. 159, § 1; C. & M. Dig., § 7286; Pope's Dig., § 9342; A.S.A. 1947, § 52-214.

SUBCHAPTER 4 — LEASES BY LIFE TENANTS

SECTION.

- 15-56-401. Exemptions.
- 15-56-402. Authority to execute leases.
- 15-56-403. Petition to lease by life tenant — Contents.
- 15-56-404. Court determination.
- 15-56-405. Court order — Disposition of royalties.
- 15-56-406. Trustee.

SECTION.

- 15-56-407. Confirmation of lease by court — Effect.
- 15-56-408. Divestiture of contingent remaindermen's title.
- 15-56-409. Service of process on respondents — Hearing on petition.

Effective Dates. Acts 1961, No. 94, § 10; Feb 16, 1961. Emergency clause provided: "It is hereby found and declared by the General Assembly that much confusion exists with respect to mineral leases on lands in which a life estate has been created pursuant to Arkansas Code Section 50-405 [§ 18-12-301]; that to avoid waste of valuable mineral deposits

it is necessary to prescribe a procedure where such life tenants may execute mineral leases on such lands; and that this act will provide such procedure. Therefore an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

15-56-401. Exemptions.

This subchapter shall not apply to the execution of oil and gas leases and shall in no wise infringe upon or affect the provisions of §§ 15-73-301 — 15-73-308.

History. Acts 1961, No. 94, § 9; A.S.A. 1947, § 52-223.

15-56-402. Authority to execute leases.

Whenever any land in this state is devised by will or conveyed by grant to any person by any language which at common law would have vested in that person an estate in fee tail, then the person who at common law would have been invested with a fee tail estate in the lands and who under the provisions of § 18-12-301 is or shall be invested with a life estate therein is authorized and empowered to execute mineral leases, other than oil and gas leases, on that land in the manner set forth in this subchapter.

History. Acts 1961, No. 94, § 1; A.S.A. 1947, § 52-215.

15-56-403. Petition to lease by life tenant — Contents.

(a) Whenever any life tenant shall desire to lease any land for the production of any minerals, other than oil and gas, he or she shall file a verified petition with the circuit court of the county in which the

lands, or the greater part of the lands, may be situated, praying for authority to execute a lease. A certified copy of the will or conveyance under which he or she claims shall be attached to the petition. The life tenant shall make as parties respondent to the petition all persons then in being who under the terms of the will or grant would become vested with title to the lands or any interests therein should the death of the life tenant occur on the date of the filing of the petition.

(b) The petition shall set forth:

- (1) The description of the land;
- (2) From whom the petitioner acquired his or her title;
- (3) The nature and kind of minerals, other than oil and gas, to be covered by and included in the lease;
- (4) The name of the proposed lessee;
- (5) The true consideration for the lease;
- (6) The nature and amount of the royalty proposed to be reserved therein; and

(7) A general statement as to the provisions of the proposed lease.

(c) The petition shall pray:

- (1) For authority to execute the lease;
- (2) That the court award the life tenant with title to the proportion of the royalties reserved in the lease and which may accrue under the lease, not exceeding one-half ($\frac{1}{2}$) of the royalties, together with a part of the bonus consideration paid therefor and delay rentals, if any, payable under the lease, and any other payments provided for in the lease, as the court shall determine is fair compensation to the life tenant for the lease upon his or her interest in the premises and as damages to the life estate by the use of the surface of the lands in the exploration for and production of the minerals therefrom; and

(3) For the appointment of a trustee to receive and hold moneys, rents, and royalties that accrue to the contingent remainder estate under the lease.

History. Acts 1961, No. 94, § 2; A.S.A. 1947, § 52-216.

15-56-404. Court determination.

(a) The court shall consider the petition and may in its absolute discretion require that other persons as it deems proper be made parties to the proceeding. The court may hear testimony to determine whether or not the execution of the lease is advisable.

(b) The court shall also determine what part of the bonus consideration paid for the lease; of the delay rentals, if any, accruing thereunder; of the other payments, if any, provided for therein; and of the royalties reserved therein and accruing thereunder, not exceeding one-half ($\frac{1}{2}$) of the royalties, should be awarded the life tenant as compensation for the lease upon his or her interest in the premises and for the damage to his or her life estate on account of the execution of the lease.

History. Acts 1961, No. 94, § 3; A.S.A. 1947, § 52-217.

15-56-405. Court order — Disposition of royalties.

(a) If the court after hearing as provided in § 15-56-404 shall determine that the lease should be executed, the judge shall enter an order authorizing the life tenant to execute the lease.

(b) The court shall further:

(1) Fix and determine the part of the bonus consideration paid for the lease; the delay rentals, if any, payable under the lease; other payments, if any, other than royalties provided for in the lease, which shall be allowed the life tenant; and the portion of the royalties reserved in the lease and that may accrue under the lease which shall be allowed the life tenant. In so doing, the court may allow the life tenant all or any part of the bonus consideration paid for the lease, the delay rentals, if any, payable under the lease, and other payments, if any, other than royalties, payable under the lease, but not more than one-half ($\frac{1}{2}$) of the royalties reserved in and which may accrue under the lease. The order of the court, upon the approval and confirmation of the lease, as provided in § 15-56-407, shall vest in the life tenant title to such part of the bonus consideration paid for the lease and delay rentals, if any, and title to other payments, if any, provided for in the lease, other than royalties, as are allowed to the life tenant and shall vest title to such proportionate part of the royalties reserved in and which may accrue under the lease as are allowed to the life tenant, free and clear of any limitations, conditions, and restrictions imposed by the will or deed by which the petitioner acquired title and free and clear of any present or future claim of any persons asserting or attempting to assert a reversionary or remainder interest therein on account of the deed or will. However, any interest allowed the life tenant in the royalties reserved in or accruing under the terms of the lease shall expire upon the termination of the lease;

(2) Appoint some suitable person as trustee for the benefit of the contingent remaindermen and reversioners and require that the trustee shall execute bond in a sum the court deems proper, which bond shall be approved by the court;

(3) Direct and authorize the life tenant, after the filing of the bond by the trustee and its approval by the court, to execute to the lessee a mineral lease covering the lands, which lease shall reserve a royalty in kind, quantity, or amount approved by the court; and

(4) Make further orders in the premises as seem equitable and just.

History. Acts 1961, No. 94, § 4; A.S.A. 1947, § 52-218.

15-56-406. Trustee.

(a) The trustee shall be under the continuing control of the circuit court. The court may remove the trustee at will, and upon the death, removal, or resignation of the trustee, the court may appoint his or her successor.

(b) The trustee, by and with the consent and approval of the court, may invest the funds coming into his or her hands in those securities into which guardians are authorized to invest the moneys of their wards.

(c) As compensation for his or her services, the trustee shall be allowed whatever sum the court may fix, not exceeding five percent (5%) of moneys collected by him or her.

(d) The court may at any time require the trustee to execute an additional bond.

(e) The trustee shall:

(1) Faithfully account for all moneys coming into his or her hands;

(2) File annual written verified reports of his or her accounts as trustee with the court of his or her appointment for its approval or rejection; and

(3) Upon the death of the life tenant, pay over to the persons then entitled thereto all of the moneys so accrued, together with any investment thereof, upon order of the circuit court.

History. Acts 1961, No. 94, § 7; A.S.A. 1947, § 52-221.

15-56-407. Confirmation of lease by court — Effect.

(a) After the trustee has executed the bond required by the court, the life tenant shall execute and present to the court for its examination the mineral lease so authorized. This lease shall reflect the portion of the consideration, rentals, other payments, if any, and royalties which shall be paid to the life tenant and the portion thereof which shall be paid to the trustee.

(b) If the court finds that the lease conforms to its previous orders, and shall be further satisfied that the consideration therefor has been paid to the trustee and the life tenant in conformity with the previous orders of the court, it shall approve the lease and confirm the sale thereof. At that time, the lessee shall become vested with the leasehold interest in and to the minerals, other than oil and gas, which are included in the lease and are situated in, on, and under the lands, free and clear of any limitations, restrictions, or conditions imposed upon the lands in the grant or will under which the life tenant acquired title to the lands and free and clear of any present or future claim of any person asserting or attempting to assert any reversionary or remainder interest therein on account of the deed or will, subject to the conditions imposed by the lease.

History. Acts 1961, No. 94, § 5; A.S.A. 1947, § 52-219.

15-56-408. Divestiture of contingent remaindermen’s title.

The order of the court fixing the proportionate part of the consideration, rentals, other payments, if any, and royalties reserved in and accruing under the lease allowed to the life tenant and the order confirming the execution of the lease shall operate to work a divestiture of title of the contingent remaindermen, and each of them, in and to the proportionate part of the consideration, rentals, other payments, if any, and the royalties reserved and accruing under the lease allowed to the life tenant, and in and to the leasehold estate insofar as said interest is conveyed by the lease, and to free the respective interests of any limitations, restrictions, or conditions imposed by the original will or deed.

History. Acts 1961, No. 94, § 6; A.S.A. 1947, § 52-220.

15-56-409. Service of process on respondents — Hearing on petition.

Service of process shall be had upon the respondents in the manner provided by law as in other chancery cases, and the petition may be heard on oral testimony taken in open court.

History. Acts 1961, No. 94, § 8; A.S.A. 1947, § 52-222.

SUBCHAPTER 5 — RAILWAYS ON MINERAL LANDS

SECTION.

- 15-56-501. Short line roads authorized.
- 15-56-502. Rights-of-way acquisition and operation.
- 15-56-503. Rights, powers, and privileges of common carrier.

SECTION.

- 15-56-504. Rights to connections, crossings, and transfer.
- 15-56-505. Passenger equipment.

Cross References. Railroads, § 23-11-101 et seq.
Weighing coal shipments, § 23-10-445.
Effective Dates. Acts 1905, No. 163, § 6: effective on passage.

Acts 1905, No. 268, § 2: effective on passage.

RESEARCH REFERENCES

Am. Jur. 54 Am. Jur. 2d, Mines, § 212.
C.J.S. 58 C.J.S., Mines, § 159.

15-56-501. Short line roads authorized.

All persons owning or controlling by lease or purchase any copper, lead, zinc, iron, marble, stone, rock, granite, slate, coal, or other mineral lands in this state shall have the same right to incorporate, own, construct, and operate short lines of railway or tramway as necessary to the successful mining, quarrying, and marketing of coal, marble, stone, rock, granite, slate, and other minerals.

History. Acts 1905, No. 163, § 1, p. Dig., § 7294; Pope's Dig., § 9350; A.S.A. 407; 1905, No. 268, § 1, p. 686; C. & M. 1947, § 52-301.

CASE NOTES

Cited: Ozark Coal Co. v. Pennsylvania A. R. Co., 97 Ark. 495, 134 S.W. 634 (1911).

15-56-502. Rights-of-way acquisition and operation.

All incorporations provided for shall:

(1) Be governed by the laws governing railway incorporations in this state; and

(2) Have the same right to acquire rights-of-way over, under, or through any private or public lands; have and exercise the same right of eminent domain in acquiring the right-of-way; and have the same authority to construct, own, lease, operate, or sell such lines of railway or tramway as may be necessary to the successful mining and marketing of coal and other minerals owned or controlled by mining corporations as is now by law granted to railroad corporations in this state.

History. Acts 1905, No. 163, § 2, p. 407; C. & M. Dig., § 7295; Pope's Dig., § 9351; A.S.A. 1947, § 52-302.

15-56-503. Rights, powers, and privileges of common carrier.

When so incorporated and constructed, short lines of railway and tramway shall be and are entitled to all the rights, powers, and privileges of a common carrier.

History. Acts 1905, No. 163, § 3, p. 407; C. & M. Dig., § 7296; Pope's Dig., § 9352; A.S.A. 1947, § 52-303.

15-56-504. Rights to connections, crossings, and transfer.

All such short lines of railway or tramway shall have the same rights and privileges of connections, crossings, sidings, switches, and transfer, without prejudice or discrimination, as are extended by custom or granted by law to railroad corporations in this state.

History. Acts 1905, No. 163, § 4, p. 407; C. & M. Dig., § 7297; Pope's Dig., § 9353; A.S.A. 1947, § 52-304.

15-56-505. Passenger equipment.

All short lines of railway or tramway not exceeding six (6) miles in length shall not be required to maintain passenger equipment. However, if at their option they carry passengers, they shall be subject to the laws governing passenger traffic on railroads in this state.

History. Acts 1905, No. 163, § 5, p. 407; C. & M. Dig., § 7298; Pope's Dig., § 9354; A.S.A. 1947, § 52-305.

CHAPTER 57

MINING AND RECLAMATION GENERALLY

SUBCHAPTER

1. GENERAL PROVISIONS. [RESERVED.]
2. VOLUNTARY RECLAMATION BY LANDOWNERS.
3. ARKANSAS OPEN-CUT LAND RECLAMATION ACT.
4. QUARRY OPERATION RECLAMATION, OPERATION, AND SAFE CLOSURE.

A.C.R.C. Notes. Acts 1995, No. 1110, §§ 1-3, provided: "SECTION 1. There is hereby created a task force to be chaired by the director of the Department of Pollution Control & Ecology or his designee and consisting of the following members appointed by the Governor: two (2) representatives from the Arkansas Conservation Coalition; one (1) county judge; two (2) representatives of industry; two (2) private citizens owning land adjoining a stream of this state; and any other appointments the Governor deems appropriate to insure a full range of concerned and informed opinion. The task force shall also consist of one (1) member appointed by the Governor from three (3) nominees submitted by the Speaker of the House of Representatives and one (1) member appointed by the Governor from three (3) nominees submitted by the President Pro Tem of the Senate. Representatives from the Game and Fish Commission, the Parks and Tourism Department, the Soil and Water Commission, and the Attorney General's Office shall serve in an advisory capacity.

"SECTION 2. The task force shall study the impact of stream bed mining on the economic and natural resources of this

state, giving specific consideration to the effect of stream bed mining on fisheries, water quality, and the overall recreational, scenic, and economic potential of the state's water resources. The task force shall report and make recommendations to the Governor and the Legislative Council by December 1, 1996.

"SECTION 3. Nothing in this act shall be construed as

"(1) Limiting or superseding any legislative act prohibiting mining in streams designated as extraordinary resource waters, or detracting from the General Assembly's conclusion that all Arkansas streams must be protected from indiscriminate mining;

"(2) Affecting the authority of the Arkansas Pollution Control & Ecology Commission to promulgate regulations implementing any other act of the General Assembly; or

"(3) Limiting the authority of the Arkansas Department of Pollution Control & Ecology to enforce any duly enacted laws or regulations limiting or prohibiting stream bed mining."

References to "this chapter" in subchapters 2 and 3 may not apply to subchapter 4 which was enacted subsequently.

RESEARCH REFERENCES

Am. Jur. 54 Am. Jur. 2d, Mines, § 172.

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

SUBCHAPTER 2 — VOLUNTARY RECLAMATION BY LANDOWNERS

SECTION.

15-57-201. Reclamation to be voluntary.
15-57-202. Exemption from land reclamation laws.

SECTION.

15-57-203. Notice of proposed reclamation — Investigation.

Cross References. Surface Coal Mining and Reclamation Act of 1979, § 15-58-101 et seq.

Preambles. Acts 1983, No. 77 contained a preamble which read: "Whereas, there are many open-cut mining pits within the State of Arkansas which are not subject to the reclamation requirements of the Arkansas Open-Cut Land Reclamation Act of 1977 since such pits were in existence at the time of the passage of that Act; and

"Whereas, it is desirable that the owners of lands on which such open-cut mining pits are situated be encouraged to make environmental or aesthetic improvements to improve or reclaim such lands although they are not required by law to do so; and

"Whereas, a procedure should be established whereby the owners of such lands, with the approval of the Department of Pollution Control & Ecology, may reclaim or improve the lands on which such mining pits are situated without subjecting themselves and such lands to the reclamation provisions of Act 336 of 1977;

"Now therefore...."

Effective Dates. Acts 1983, No. 77, § 5: Feb. 8, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Open-Cut Land Reclamation Act of 1977 specifically exempts from the re-

quirements of that Act open-cut mining pits which were in existence on the effective date of the Act; that some of the owners of lands on which such exempt pits are located would be willing to reclaim or make environmental or aesthetic improvements to such lands and pits, if the owners were assured that any such reclamation or improvement would not subject such lands or pits or the owners thereof to the provisions of the Arkansas Open-Cut Land Reclamation Act of 1977 or any other open-cut mining pit reclamation laws of the State; that it is in the best interest of the State that the owners of such lands be encouraged to make such environmental or aesthetic improvements by assuring such owners that any such voluntary improvements made will not subject the owner of the land or the lands to the existing land reclamation Acts; that this Act is designed to establish a procedure whereby such voluntary improvements can be made and to specifically provide that such improvements shall not subject the land so reclaimed or improved to the provisions of the various land reclamation laws of the State and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

15-57-201. Reclamation to be voluntary.

Any land reclamation or improvement conducted by the owner of lands pursuant to the provisions of this subchapter shall be strictly on a voluntary basis. The reclamation or improvement shall not subject the lands or the owner to the provisions of the Arkansas Open-Cut Land Reclamation Act of 1977 [repealed] or any other reclamation laws of this state.

History. Acts 1983, No. 77, § 3; A.S.A. 1947, § 52-974.

A.C.R.C. Notes. Acts 1991, No. 827, repealed and replaced the Arkansas

Open-Cut Land Reclamation Act of 1977, Acts 1977, No. 336. For current law, see § 15-57-301 et seq.

15-57-202. Exemption from land reclamation laws.

(a) The owners of lands on which are situated open-cut mining pits that are not subject to the requirements of the Arkansas Open-Cut Land Reclamation Act of 1977 [repealed] or any other land reclamation laws of this state are authorized to make voluntary environmental or aesthetic improvements to reclaim or improve the lands and the open-cut mining pits thereon after first giving written notice of the proposed improvements to the Arkansas Department of Environmental Quality.

(b) Any environmental or aesthetic reclamation or improvement of the lands shall not be construed to be open-cut mining as defined in the Arkansas Open-Cut Land Reclamation Act of 1977 [repealed] and shall not subject the lands, pits, or the owners thereof to the requirements of the provisions of the open-cut land reclamation laws of this state.

History. Acts 1983, No. 77, § 1; A.S.A. 1947, § 52-972; Acts 1999, No. 1164, § 137.

A.C.R.C. Notes. Acts 1991, No. 827, repealed and replaced the Arkansas Open-Cut Land Reclamation Act of 1977, Acts 1977, No. 336. For current law, see § 15-57-301 et seq.

Acts 1997, No. 1219, § 2, provided: “Arkansas Department of Pollution Control & Ecology” renamed to ‘Arkansas Department of Environmental Quality’.

“(a) Effective March 31, 1999, the ‘Arkansas Department of Pollution Control & Ecology’ or ‘Department,’ as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its

place, the ‘Arkansas Department of Environmental Quality’ is hereby established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

“(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change.”

15-57-203. Notice of proposed reclamation — Investigation.

(a) Any owner of such lands who wishes to make environmental or aesthetic improvements to reclaim or improve the lands, as authorized in this subchapter, shall file written notice thereof with the Arkansas

Department of Environmental Quality before entering upon the improvements.

(b) The purpose of the notice shall be to advise the department of the proposed reclamation or improvements to be made and to enable the department to make investigations necessary to assure that the owner of the lands does not engage in activities in connection with any reclamation or improvement project that would be in violation of the Arkansas Open-Cut Land Reclamation Act, § 15-57-301 et seq.

History. Acts 1983, No. 77, § 2; A.S.A. 1947, § 52-973; Acts 1999, No. 1164, § 138.

A.C.R.C. Notes. Acts 1997, No. 1219, § 2, provided: "Arkansas Department of Pollution Control & Ecology' renamed to 'Arkansas Department of Environmental Quality'.

"(a) Effective March 31, 1999, the 'Arkansas Department of Pollution Control & Ecology' or 'Department,' as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the 'Arkansas Department of Environmental Quality' is hereby established,

succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

"(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change."

SUBCHAPTER 3 — ARKANSAS OPEN-CUT LAND RECLAMATION ACT

SECTION.

- 15-57-301. Title.
- 15-57-302. Declaration of policy.
- 15-57-303. Definitions.
- 15-57-304. Violations.
- 15-57-305. Civil and administrative penalties.
- 15-57-306. Administration.
- 15-57-307. Rules and regulations.
- 15-57-308. Technical and financial assistance.
- 15-57-309. Entry on lands for inspection.
- 15-57-310. Necessity of permit — Effective date.
- 15-57-311. Application for permit — Fee — Bond.

SECTION.

- 15-57-312. Permit as state property.
- 15-57-313. Withdrawal of land covered by permit.
- 15-57-314. Extension of permit.
- 15-57-315. Duties of operator.
- 15-57-316. Bond of operator.
- 15-57-317. Bond forfeiture proceedings.
- 15-57-318. Registration of existing open-cut mines.
- 15-57-319. Land Reclamation Fund — Permit fee.
- 15-57-320. Exemptions.
- 15-57-321. [Repealed.]

Publisher's Notes. Former subchapter 3, concerning the Arkansas Open-Cut Land Reclamation Act, was repealed by Acts 1991, No. 827, § 20. The former subchapter was derived from the following sources:

- 15-57-301. Acts 1977, No. 336, § 1; A.S.A. 1947, § 52-917.
- 15-57-302. Acts 1977, No. 336, § 2; A.S.A. 1947, § 52-918.

15-57-303. Acts 1977, No. 336, § 3; 1985, No. 930, § 2; A.S.A. 1947, § 52-919; Acts 1987, No. 664, § 1.

15-57-304. Acts 1977, No. 336, § 16; 1981, No. 895, § 1; A.S.A. 1947, § 52-932.

15-57-305. Acts 1977, No. 336, § 15; A.S.A. 1947, § 52-931.

15-57-306. Acts 1977, No. 336, § 12; 1977, No. 824, § 1; A.S.A. 1947, § 52-928.

15-57-307. Acts 1977, No. 336, § 17; A.S.A. 1947, § 52-933.

15-57-308. Acts 1977, No. 336, § 8; A.S.A. 1947, § 52-924.

15-57-309. Acts 1977, No. 336, § 4; A.S.A. 1947, § 52-920.

15-57-310. Acts 1977, No. 336, § 5; A.S.A. 1947, § 52-921; Acts 1987, No. 664, § 2.

15-57-311. Acts 1977, No. 336, § 6; 1981, No. 896, § 1; A.S.A. 1947, § 52-922; Acts 1987, No. 664, § 3.

15-57-312. Acts 1977, No. 336, § 6; A.S.A. 1947, § 52-922.

15-57-313. Acts 1977, No. 336, § 6; A.S.A. 1947, § 52-922.

15-57-314. Acts 1977, No. 336, § 6; A.S.A. 1947, § 52-922; Acts 1987, No. 664, § 3.

15-57-315. Acts 1977, No. 336, § 7; A.S.A. 1947, § 52-923; Acts 1987, No. 664, § 4.

15-57-316. Acts 1977, No. 336, § 9; A.S.A. 1947, § 52-925.

15-57-317. Acts 1977, No. 336, § 11; A.S.A. 1947, § 52-927.

15-57-318. Acts 1977, No. 336, § 13; A.S.A. 1947, § 52-929.

15-57-319. Acts 1977, No. 336, § 14; A.S.A. 1947, § 52-930.

15-57-320. Acts 1977, No. 336, § 10; A.S.A. 1947, § 52-926.

15-57-321. Acts 1977, No. 336, § 18; A.S.A. 1947, § 52-934.

Cross References. Surface coal mining and reclamation, § 15-58-101 et seq.

Effective Dates. Acts 1993, No. 368, § 5: Mar. 5, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the reclamation and restoration of land affected by open-cut mining operations are essential to the preservation for productive use of the land resources of this state, however, the construction and maintenance of streets and

highways are also a very productive use of land resources and such uses should be exempt from the provisions of the 'Arkansas Open-Cut Land Reclamation Act' when conducted under the auspices of the Arkansas Highway Department or any county or municipal government. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1345, § 7: Apr. 17, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly that protection of Arkansas' streams is necessary to prevent degradation of the water quality and existing designated uses. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1999, No. 1526, § 13: Apr. 15, 1999. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the reclamation and restoration of land affected by open-cut mining operations are essential to the preservation for productive use of the land resources of this state. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

RESEARCH REFERENCES

Ark. L. Notes. Looney, Handling Administrative Proceedings Before the Arkansas Pollution Control and Ecology De-

partment and Commission, 1988 Ark. L. Notes 23.

15-57-301. Title.

This subchapter shall be known and cited as "The Arkansas Open-Cut Land Reclamation Act".

History. Acts 1991, No. 827, § 1.

15-57-302. Declaration of policy.

It is declared to be the policy of this state to provide during and after completion of open-cut mining operations for the reclamation and restoration of affected lands to productive use, including, but not limited to, the planting of forests, the seeding of grasses and legumes for grazing purposes, the planting of crops for harvest, the enhancement of wildlife and aquatic resources, the establishment of recreational, home, and industrial sites, and the conservation, development, management, and appropriate use of all the natural resources of affected areas for compatible multiple purposes, in order to aid in maintaining or improving the tax base and protecting the health, safety, and general welfare of the people as well as the natural beauty and aesthetic value in the affected areas of this state.

History. Acts 1991, No. 827, § 2.

15-57-303. Definitions.

As used in this subchapter:

(1) "Affected land" means the area of land where open-cut mining has been or is taking place or upon which spoil has been deposited or any other surface disturbance, including haul roads, processing and loading facilities, or appurtenances related to the mining operations on or after July 1, 1977, until the land is reclaimed;

(2) "Commercial purposes" means the sale of material from an open-cut mine as either a cash transaction, part of a contractual agreement involving payment for materials provided, or for use in another process to create a product with value;

(3) "Commission" means the Arkansas Pollution Control and Ecology Commission or such commission or other entity as may lawfully succeed to the powers and duties of the commission;

(4) "Department" means the Arkansas Department of Environmental Quality or such department or other entity which may lawfully succeed to the powers and duties of the department;

(5) "Director" means the executive head and active administrator of the Arkansas Department of Environmental Quality;

(6) "Final cut" means the last pit created in an open-cut mined area;

(7) "High wall" means that side of the pit adjacent to unmined land;

(8) "Open-cut mining" means the surface extraction of clay, bauxite, sand, gravel, soil, shale, or other materials for commercial purposes;

(9) "Operator" means any person engaged in or controlling an open-cut mining operation;

(10) "Peak" means a projecting point of spoil created in the open-cut mining process;

(11) "Permit term" means the period of time beginning with the date upon which a permit is granted for open-cut mining of lands under the provisions of this subchapter and ending on the date requested by the operator and specified by the department, though not to exceed five (5) years;

(12) "Person" means any individual, partnership, firm, company, public or private corporation, cooperative, association, joint-stock company, trust, estate, political subdivision, or any agency, board, department, or bureau of the state or any other legal entity recognized by law as the subject of rights and duties;

(13) "Pit" means a tract of land where open-cut mining is taking place;

(14) "Reclamation for productive use" means conditioning areas affected by open-cut mining to make them suitable for any uses or purposes consistent with those enumerated in the declaration policy;

(15) "Ridge" means a lengthened elevation of spoil created in the open-cut mining process;

(16) "Right-of-way" means the portion of land over or under which certain facilities, including, but not limited to, roadways, pipelines, or power lines, are built; and

(17) "Spoil" means all waste material and debris connected with open-cut mining and with the mechanical removal, cleaning, and preparation of materials at the mine site.

History. Acts 1991, No. 827, § 3; 1999, No. 1164, § 139; 1999, No. 1526, § 1.

A.C.R.C. Notes. Acts 1997, No. 1219, § 2, provided: "Arkansas Department of Pollution Control & Ecology" renamed to 'Arkansas Department of Environmental Quality'.

"(a) Effective March 31, 1999, the 'Arkansas Department of Pollution Control & Ecology' or 'Department,' as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the 'Arkansas Department of Environmental Quality' is hereby established, succeeding to the general powers and re-

sponsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

"(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change."

15-57-304. Violations.

(a) It shall be unlawful for any person to:

(1) Violate any provision of this subchapter or any rule, regulation, or order of the Arkansas Pollution Control and Ecology Commission or the Arkansas Department of Environmental Quality issued pursuant to this subchapter;

(2) Engage in open-cut mining without a permit issued pursuant to this subchapter;

(3) Violate any conditions of a permit or reclamation plan issued pursuant to this subchapter;

(4) Knowingly make any false statement, representation, or certification, or knowingly fail to make a statement, representation, or certification in any application, plan, record, report, or other document filed or required to be maintained under this subchapter; or

(5) Willfully resist, prevent, impede, or interfere with the Director of the Arkansas Department of Environmental Quality or any of his or her authorized representatives in the performance of duties pursuant to this subchapter.

(b) For the purposes of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

History. Acts 1991, No. 827, § 19;
1999, No. 1526, § 2.

15-57-305. Civil and administrative penalties.

(a) **CIVIL PENALTIES.** The Arkansas Department of Environmental Quality is authorized to institute a civil action in any court of competent jurisdiction to accomplish any or all of the following:

(1) To restrain any violation of or to compel compliance with the provisions of this subchapter or of any order, rule, regulation, permit, or reclamation plan issued pursuant thereto;

(2) To accomplish remedial measures as may be necessary or appropriate to implement or effectuate the purposes and intent of this subchapter, including the reclamation of affected land;

(3) To recover all costs, expenses, and damages to the department or any other agency of the state in enforcing the provisions of this subchapter and reclaiming affected land;

(4) To assess civil penalties for violations of this subchapter or of any order, rule, regulation, permit, or reclamation plan issued pursuant thereto in an amount not to exceed:

(A) One thousand dollars (\$1,000) for the first violation;

(B) Two thousand five hundred dollars (\$2,500) for a second separate violation of the same offense within two (2) years; and

(C) Five thousand dollars (\$5,000) for a third separate or subsequent violation of the same offense within two (2) years;

(5) To recover civil penalties assessed pursuant to subsections (b) and (c) of this section; or

(6) To forfeit a reclamation bond.

(b) **ADMINISTRATIVE PENALTIES.**

(1) Any person who engages in open-cut mining without first securing a permit as required by this subchapter or who fails to reclaim affected lands in accordance with this subchapter or who violates any provision of this or any order, regulation, rule, permit, or reclamation plan issued pursuant thereto, may be assessed an administrative civil penalty by the department not to exceed:

- (A) One thousand dollars (\$1,000) for the first violation;
- (B) Two thousand five hundred dollars (\$2,500) for a second separate violation of the same offense within two (2) years; and
- (C) Five thousand dollars (\$5,000) for a third separate or subsequent violation of the same offense within two (2) years.

(2) No administrative civil penalty may be assessed until the person charged with the violation has been given the opportunity for a hearing and has exhausted all administrative appellate remedies.

(3) The amount of the administrative civil penalty shall be determined in accordance with regulations adopted by the Arkansas Pollution Control and Ecology Commission, including, but not limited to, the regulations on civil penalties.

(c) All hearings and appeals arising under this subchapter shall be conducted in accordance with the procedures described in §§ 8-4-218 — 8-4-229 and in accordance with regulations adopted by the commission, including, but not limited to, the regulations on administrative procedures.

History. Acts 1991, No. 827, § 4; 1999, No. 1526, § 3; 2001, No. 550, § 1.

15-57-306. Administration.

The Arkansas Department of Environmental Quality through the Director of the Arkansas Department of Environmental Quality, and any representatives designated by the director, shall administer and enforce the provisions of this subchapter, except for those provisions specifically designated to the Arkansas Pollution Control and Ecology Commission.

History. Acts 1991, No. 827, § 5.

15-57-307. Rules and regulations.

The Arkansas Pollution Control and Ecology Commission may adopt and promulgate rules and regulations necessary to administer the provisions of this subchapter.

History. Acts 1991, No. 827, § 6.

15-57-308. Technical and financial assistance.

The Arkansas Department of Environmental Quality shall have the authority to cooperate with and receive technical and financial assistance from the United States, or any department, agency, or officer thereof, for any purposes relating to the reclamation of affected lands.

History. Acts 1991, No. 827, § 7.

15-57-309. Entry on lands for inspection.

The Arkansas Department of Environmental Quality or its designated representatives may enter upon the lands affected by open-cut mining at all reasonable times for the purpose of determining compliance with the provisions of this subchapter.

History. Acts 1991, No. 827, § 8; 2001, No. 550, § 2.

15-57-310. Necessity of permit — Effective date.

(a) It shall be unlawful for any operator to engage in open-cut mining without first obtaining from the Arkansas Department of Environmental Quality a permit to do so in the form required by the Arkansas Department of Environmental Quality.

(b) An operator shall be deemed to be engaged in open-cut mining when he or she affects any land in preparation for open-cut mining.

(c)(1) Notwithstanding the provisions of this section, the Arkansas State Highway and Transportation Department or its contractor shall not be required to obtain a permit for an open-cut mine where the material is used exclusively in the construction, reconstruction, improvement, or maintenance of roadways.

(2) Reclamation of the area shall conform to the provisions of the standard specifications for highway construction upon discontinuation of use of the pit for the above listed purposes.

(3) The occasional sale of material to the Arkansas State Highway and Transportation Department by an open-cut mine operator does not exempt the operator from complying with his or her permit requirements or of the requirements of this subchapter.

(4) Where reclamation requirements of the operator will interfere with a contractual agreement with the Arkansas State Highway and Transportation Department, the operator shall be allowed to revise his or her reclamation plan and schedule of completion accordingly and in keeping with the declaration of policy of this subchapter.

(d)(1) Nothing in this subchapter shall be construed to require any operator to reclaim or revegetate any area affected by open-cut mining prior to July 1, 1971.

(2) Nothing in this subchapter shall be construed to require any operator to reclaim or revegetate any previously exempted excavation sites such as soil and shale pits that were affected and abandoned prior to January 1, 1999.

(3) Nothing in this subchapter shall be construed to apply to the removal of soil, shale, or stone at a quarry operation that is regulated under the Arkansas Quarry Operation, Reclamation and Safe Closure Act, § 15-57-401 et seq.

(4) Nothing in this subchapter shall be construed to apply to any excavation activity associated with the improvement or maintenance of any agricultural lands or associated irrigation systems.

(e) The requirements of this subchapter shall not apply to the non-commercial removal of clay, bauxite, sand, gravel, soil, shale, or other materials from lands by the owner of said lands or by a contractor hired by the owner for the exclusive use by the landowner for construction, improvement, or maintenance of roads on any of the owner's lands, for any environmental improvements to previously disturbed lands, or for the concurrent or short-term excavation of materials for ninety (90) days or less during the construction of buildings either for residential, commercial, or industrial purposes.

(f)(1) The mining of gravel or other materials from streams or stream beds shall comply with the permitting requirements of this subchapter.

(2) There shall be no mining in streams designated as "extraordinary resource waters" of the state, as established in water quality standards duly promulgated by the Arkansas Pollution Control and Ecology Commission for all surface waters of the State of Arkansas.

(g)(1) The Arkansas Department of Environmental Quality shall develop regulations to implement the provisions of this chapter.

(2) The Arkansas Department of Environmental Quality shall develop documentation that will guide an operator through the permitting process.

History. Acts 1991, No. 827, § 9; 1993, No. 378, § 1; 1995, No. 1345, § 2; 1999, No. 1526, § 4.

15-57-311. Application for permit — Fee — Bond.

(a) Any person desiring to engage in open-cut mining shall make written application to the Arkansas Department of Environmental Quality for a permit. The application shall be made upon a form furnished by the department.

(b) The applicant shall fully state the information required on the form and provide a legal description of the area of land to be permitted and proof that the applicant has the right to mine the area.

(c) The perimeter of the area to be permitted must be clearly marked on the ground at all times until such time as the permitted area is released from reclamation liability by the department.

(d) The application shall be accompanied by the applicant's detailed plan of reclamation of the area to be affected. The plan shall include a time schedule for the completion of each phase of reclamation and an estimate of the cost of each phase of reclamation.

(e) The application for a mining permit shall be accompanied by a bond or substituted security for the affected or the proposed affected area in favor of the State of Arkansas through the department, to be effective from and after the time that the operator has affected land in the process of open-cut mining or after the time that a permit is granted and which shall meet the requirements of § 15-57-316.

(f) The application for a permit shall be accompanied by a fee of ten dollars (\$10.00) per acre with a two hundred dollar (\$200) minimum.

(g) The department may approve a permit for mining and reclaiming the permitted area in increments, provided that the permit application contains an acceptable incremental mining plan and is accompanied by a bond or substituted security to cover reclamation of each successive increment prior to affecting it.

(h) The permit shall require a bond or substituted security to be submitted for the cost of reclamation of each successive increment prior to the time that any area within the increment is affected by the operator.

(i) Variances and interim authority issued under this subchapter shall comply with the requirements of § 8-4-230.

(j)(1)(A) After notice and opportunity for a public hearing, the department may develop and issue general permits for any category of activities involving open-cut mining operations if the department determines that the activities in a category:

(i) Are similar in nature;

(ii) Will cause only minimal temporary adverse environmental effects if performed separately; and

(iii) Will have only minimal cumulative adverse effects on the environment.

(B) To qualify for inclusion under the general permit, applicants shall submit a notice of intent and supporting documentation on forms developed by the department.

(C) Facilities and practices not qualifying for inclusion under the conditions of a general permit shall obtain an individual permit.

(2) The Director of the Arkansas Department of Environmental Quality at his or her discretion may require an applicant to seek coverage under an individual permit.

(3)(A) Unless extended by the director, no general permit issued under this subsection shall be effective for a period of more than five (5) years after the date of its issuance.

(B) The general permit may be revoked or modified by the department if after opportunity for a public hearing the department determines that the activities authorized by the general permit:

(i) May have an adverse impact on the environment; or

(ii) Are more appropriately authorized by individual permits.

(4) Before issuing general permits, the Arkansas Pollution Control and Ecology Commission shall promulgate rules necessary to implement and administer the provisions of this subsection.

History. Acts 1991, No. 827, § 10; **Amendments.** The 2005 amendment 1999, No. 1526, § 5; 2001, No. 550, § 3; added (j). 2005, No. 855, § 1.

15-57-312. Permit as state property.

Although issued to the operator, the permit is at all times the property of the State of Arkansas. Upon the expiration, suspension, or

termination thereof, the operator shall promptly deliver the permit to the Arkansas Pollution Control and Ecology Commission.

History. Acts 1991, No. 827, § 11.

15-57-313. Withdrawal of land covered by permit.

An operator may withdraw any land covered by a permit, except affected land, by notifying the Arkansas Department of Environmental Quality, in which case the penalty of the bond or substituted security filed by the operator pursuant to the provisions of this subchapter shall be reduced proportionately.

History. Acts 1991, No. 827, § 12.

15-57-314. Extension of permit.

Where the area for which a permit is in effect is not mined or where open-cut mining operations have not been completed during the permit term, the permit as to such area may be extended by the Arkansas Department of Environmental Quality on the terms and conditions required by the department.

History. Acts 1991, No. 827, § 13.

15-57-315. Duties of operator.

Any operator of an open-cut mine will be subject to the following requirements with respect to the mining and reclamation of the site:

(1)(A)(i) All affected land shall be graded to a rolling or terraced topography with adequate drainage.

(ii)(a) No final slope will be steeper than one (1) vertical to three (3) horizontal.

(b) The Arkansas Department of Environmental Quality may approve a steeper final slope where the original contour of the affected land was steeper than the one (1) to three (3) ratio if the operator can assure, to the satisfaction of the department, the integrity of the final contour.

(B) The Director of the Arkansas Department of Environmental Quality shall develop regulations which will allow the department the discretion to permit deviations from certain reclamation standards, including final slope steepness requirements within this subdivision (1), because of unique mining situations, provided the deviations are consistent with the declaration of policy in this subchapter;

(2)(A) The operator may construct earthen dams where lakes may be formed in accordance with sound engineering practices.

(B)(i) If a lake is to be left as a part of the reclamation plan, provisions must be made by the operator to assure that a pH factor of six (6) to nine (9) is maintained.

(ii) However, where water runoff from outside the affected area into the lake has a pH factor of less than six (6) or greater than nine (9) or in order to allow the lake to more closely match the natural environment, the department, in its discretion, may allow a deviation in pH levels;

(3) On all affected land which is to be reforested, the operator shall construct reasonable fire lanes or access roads of at least ten feet (10') in width through the land unless this requirement is waived by the department;

(4)(A) Requirements for both establishment and maintenance of the vegetative cover shall be established by the department, and the operator shall comply with the requirements or use other equally effective means.

(B) When the site slope is in condition for vegetating, a soil test may be made as a basis for soil amendments. Amendments may include lime, fertilizer, secondary micronutrients, an application of topsoil, or other means reasonably calculated to restore the slope to vegetating capabilities.

(C)(i) Laboratory soil tests and recommendations shall be obtained from the University of Arkansas Cooperative Extension Service or any other public or private organization or person approved by the department.

(ii) The operator shall furnish copies of the soil sample report and recommendations to the department.

(D) Specifications concerning species to be grown, intended use, and associated information shall be provided by the operator on soil sample information sheets, and varieties and seeding rates of the species to be planted must conform to the recommendations of state and federal agricultural or forestry agencies;

(5)(A) Open-cut mining operations must maintain an undisturbed buffer zone of fifty feet (50') from any adjacent property line or right-of-way until reclamation begins.

(B)(i) For the department to approve a variance on the fifty-foot buffer zone, there must be an agreement between the affected property owner or right-of-way holder and the operator.

(ii) Proof of such an agreement must be provided to the department.

(C) The operator may begin creating the final slope during reclamation at ten feet (10') from the adjacent property line or right-of-way.

(D) For purposes of this subdivision (5), the term "property line", "property owner", or "right-of-way holder" means and includes boundaries and owners of reserved or granted mineral rights where the fee simple interest and mineral interest have been severed;

(6)(A) Whenever the exposed face of mined seams that contain acid-forming materials is not covered by water or by permanent water impoundment, the operator who mined the seams shall cover the exposed face of the seams with earth or spoil materials to a depth

of not less than three feet (3') upon receiving approval from the department.

(B) Alternatively, the department may approve any other course or conduct proposed by the operator which will assure protection of the seams from atmospheric exposure, minimize leaching action, or otherwise conform with water pollution control criteria to prevent formation of acid mine water or discharge mine water;

(7)(A) The operator shall submit to the department no later than June 1 of each year of the permit term:

(i) A map in a form acceptable to the department showing the location of the affected areas by section, township, range, and county with other legal description as will identify the affected land during the permit term upon which the operator has completed mining operations;

(ii) The extent of completed reclamation as required under § 15-57-311(d); and

(iii) A legend upon the map showing the number of acres of affected land.

(B) The annual report shall include the amount of material mined during each twelve-month period;

(8)(A) The department's approval of the operator's reclamation plan may be based upon the advice and technical assistance of the Arkansas Natural Resources Commission, the Arkansas State Game and Fish Commission, the State Forester, the Arkansas Geological Survey, and other agencies or persons having experience in foresting and reclaiming open-cut mined lands with forest or agronomic or horticultural species, based upon scientific knowledge from research into reclaiming and utilizing forest and agronomic species on open-cut mined lands.

(B) The operator shall designate which parts of the affected land shall be reclaimed for forest, pasture, crop, horticulture, homesite, recreational, industrial, or other use, including food, shelter, or ground cover for wildlife and shall show each use by appropriate designation on the reclamation map;

(9)(A)(i) All reclamation shall be completed by the operator in compliance with its detailed plan of reclamation.

(ii) Where natural weathering and leaching of affected land fails to support plant growth at the end of the reclamation period as required under § 15-57-311(d), the department, at the request of the operator, may approve a permit extension from year-to-year from the termination of the permit on the permitted area.

(B) In the event that the operator does not comply with its schedule of reclamation or extensions granted within a reasonable period of time, to be determined by the department, the bond or substituted security of affected land not satisfactorily reclaimed shall be forfeited;

(10) In the event that the operator's reclamation plan is found impracticable by the operator, upon the application of the operator, the

department, in its discretion, may allow the modification of the reclamation plan, provided that the modified plan will carry out the purposes of this subchapter;

(11) All mine spoil generated by the operator shall be disposed of in a manner approved by the department and designed to control siltation, erosion, or other damage to streams and natural watercourses, as best allowed by the soil conditions of the permitted area;

(12) The operator shall preserve any topsoil for redistribution during reclamation unless otherwise approved by the director;

(13) The operator shall protect the public from the dangers inherent in an open-cut mining operation by restricting access to the mine site and posting adequate warning signs; and

(14) Upon approval from the department, stockpiles of processed materials may be left without being reclaimed if there is a likelihood that there will be a market for the material in the future and that there will be no form of pollution from the stockpiles remaining on or leaving the property.

History. Acts 1991, No. 827, § 14;
1993, No. 378, § 2; 1995, No. 1345, § 1;
1999, No. 1526, § 6; 2001, No. 550, § 4.

15-57-316. Bond of operator.

(a)(1)(A) Any bond provided in this subchapter to be filed with the Arkansas Department of Environmental Quality by the operator shall be in such form as the department shall prescribe, payable to the State of Arkansas through the department, conditioned that the operator shall faithfully perform all requirements of this subchapter and comply with all rules, regulations, and orders made in accordance with the provisions of this subchapter.

(B) The bond shall be signed by the operator and a good and sufficient corporate surety authorized to do business in the United States.

(2) The penalty of the bond shall be in an amount equal to the estimated cost of reclamation, as required in § 15-57-311(d).

(3)(A) In the event that the department finds the cost of reclamation to be an underestimate, the department shall make use of available expertise to establish the estimated cost of reclamation, which shall be the amount of the bond.

(B) In the event of a disagreement concerning the estimate of the proper amount of the bond, the department may retain independent expertise as is necessary to establish the amount of the bond.

(4) The Arkansas Pollution Control and Ecology Commission shall promulgate regulations concerning bonds and substituted security which will attempt to ensure that small operators are not precluded from development of mineral resources as a result of high bond amounts, but which will provide reasonable security.

(b)(1) The department may accept cash, securities, or other collateral, including, but not limited to, letters of credit and mortgages on

real property provided by the operator in an amount equal to that of the required bond as provided in subsection (a) of this section.

(2) The bond or substituted security may be increased or reduced from time to time as provided in this subchapter.

(3) The bond or substituted security shall be in effect and subject to forfeiture in accordance with this subchapter from and after the time that the operator has affected land in the process of open-cut mining or after the time a permit is granted by the department until the affected area has been reclaimed, approved, and released.

(c)(1) Any bond or substituted security shall not be cancelled by the surety unless it has given no less than ninety (90) days' notice of the cancellation to the department.

(2) In no event shall a bond be cancelled on an area that at the time of cancellation has become affected land under the provisions of this subchapter.

(d)(1) If the license to do business of any surety upon a bond or substituted security filed with the department pursuant to this subchapter shall be suspended or revoked, the operator, within thirty (30) days after receiving notice of the revocation, shall substitute for the surety a licensed corporate surety.

(2) Upon the failure of the operator to make substitution of the surety, the department shall suspend the permit of the operator until the substitution is made.

(e)(1) The department shall give written notice to the operator of any violation of this subchapter or noncompliance with any of the rules, regulations, or orders promulgated under this subchapter.

(2) If corrective measures determined by the department, including, but not limited to, increase of the bond or substituted security, are not commenced or agreed to by the operator within a reasonable period of time to be determined by the department, the department may terminate the permit of the operator and forfeit the bond or substituted security.

(3) If a permit has not been issued but a bond has been posted during the application process and this process will not be completed and there is affected land at the site, the department may forfeit the bond or substituted security as provided in § 15-57-317.

(f) The department may reclaim any affected land for which a bond has been forfeited.

(g)(1) Whenever an operator shall have completed all requirements under the provisions of this subchapter as to any affected land, it shall so notify the department.

(2) If the department determines that the operator has completed reclamation requirements and achieved results appropriate to the use for which the affected land was reclaimed, the department shall release the operator from further obligations regarding the affected land and the penalty of the bond or substituted security shall be reduced accordingly.

(h)(1) Upon partial completion of reclamation, the operator may submit a written request to the department for the purpose of propor-

tionately reducing the amount of the bond or substituted security upon affected lands.

(2) If the department determines that proper reclamation has been accomplished under the provisions of this subchapter on an area less than the total area of the affected area, the department shall proportionately reduce the amount of the bond or substituted security.

(i) No operator shall be eligible to receive a new or renewed permit who has had a permit revoked, bond forfeited, or who has outstanding substantial unmitigated violations of this subchapter, including failure to reclaim, unless the department finds upon review a demonstrable change of circumstances justifying an exception to these prohibitions.

(j) Liability under the bond or substituted security shall be for the duration of the open-cut mining operation and for that period required to establish successful reclamation of the affected area.

(k) Nothing contained herein shall be deemed to preclude the right of the department to recover the actual cost of reclamation over and above the amount of bond.

History. Acts 1991, No. 827, § 15;
1999, No. 1526, § 7.

15-57-317. Bond forfeiture proceedings.

(a) The Arkansas Department of Environmental Quality may institute proceedings to have the bond or substituted security of the operator forfeited for any of the following reasons, including, but not limited to:

(1) Failure to abate any violation of this subchapter or any rule or regulation promulgated thereunder;

(2) Failure to comply with the terms and conditions of the open-cut mining permit or the bond;

(3) Failure to comply with any order of the department;

(4) Failure to reclaim any affected land in accordance with this subchapter; or

(5) Insolvency, bankruptcy, or receivership of the operator.

(b) The department shall notify the operator in writing of the bond forfeiture, and the operator shall be given an opportunity for a hearing as provided in this subchapter.

History. Acts 1991, No. 827, § 16;
1999, No. 1526, § 8.

15-57-318. Registration of existing open-cut mines.

The Arkansas Department of Environmental Quality shall require registration of all existing unpermitted open-cut mines in which mining operations are not being conducted.

History. Acts 1991, No. 827, § 18.

15-57-319. Land Reclamation Fund — Permit fee.

(a) A Land Reclamation Fund is established on the books of the Treasurer of State, Auditor of State, and Chief Fiscal Officer of the State. The fund shall consist of civil penalty and bond forfeiture amounts, gifts, grants, donations, and other funds as may be made available by the General Assembly, including all interest earned upon moneys deposited into the fund. The Arkansas Department of Environmental Quality shall use the funds to accomplish reclamation of affected lands.

(b) All fees and any moneys collected as reimbursement for expenses, costs, and damages to the state under the provisions of this subchapter shall be deposited in the general revenue fund of the department and shall be used to defray the administrative and enforcement costs of this subchapter.

(c) The Arkansas Pollution Control and Ecology Commission may by regulation prescribe an annual permit fee on affected lands.

History. Acts 1991, No. 827, § 17.

15-57-320. Exemptions.

(a) Nothing in this subchapter shall be construed to require any agent or employee of a county or municipal government or a landowner selling exclusively to those government entities to comply with any of the provisions of this subchapter when engaged in open-cut mining outside of the channel of a stream for the construction, reconstruction, improvement, or maintenance of streets and highways or private roads, streets, driveways, or highways, or other public projects of a county or municipality when it is conducted under the authority of such a government for such activities and on lands for which the county or municipal government has established rights.

(b)(1) The county and municipal governments shall remove topsoil and spoil and store it on the mining site.

(2) Upon completion of mining, the site shall be graded such that no slope will be steeper than one foot (1') vertical to three feet (3') horizontal, and the topsoil shall be respread and the site revegetated in a manner to prevent pollution of the waters of Arkansas.

(c) An agent or employee of a county or municipal government may remove gravel or other materials from any stream in order to protect the integrity of bridges or low water crossing of any public roadway without obtaining a permit.

(d) A governmental unit may remove gravel or other material from any stream in order to protect the integrity of a government-owned or government-controlled structure without obtaining a permit.

(e)(1) Flood control projects authorized by the United States Army Corps of Engineers shall be exempt from the permitting requirement. Provided, however, that certification under section 401 of the Federal Clean Water Act is obtained for said project.

(2) In the event that authorization pursuant to section 404 of the Federal Clean Water Act is determined by the United States Army Corps of Engineers not to be required for a specific flood control or bank stabilization project, the Arkansas Department of Environmental Quality will review the proposed project plan using the Section 401 water quality certification criteria.

(3) The department shall provide the necessary authorization for the project once it has been determined that the activity will not adversely affect water quality.

(f)(1) All stream gravel mining operations on streams designated as extraordinary resource waters after January 1, 1995, may continue to operate under a permit issued by the department for a period of two (2) years from the date of the designation.

(2) At the end of the two-year period, all mining activities must be terminated and the affected area reclaimed in accordance with the operator's approved reclamation plan.

(g) The permitting provisions of this subchapter shall not apply to any area being excavated for soil or shale that is less than three (3) acres where an undisturbed buffer zone of not less than fifty feet (50') exists between the highwalls of the excavation site and any adjacent property line or to any size area being excavated if the area being excavated is at least one-fourth ($\frac{1}{4}$) of a mile from any adjacent property line.

History. Acts 1993, No. 368, § 1; 1995, No. 1345, § 3; 1999, No. 1164, § 140; 1999, No. 1526, § 9.

A.C.R.C. Notes. Acts 1997, No. 1219, § 2, provided: "‘Arkansas Department of Pollution Control & Ecology’ renamed to ‘Arkansas Department of Environmental Quality’.

"(a) Effective March 31, 1999, the ‘Arkansas Department of Pollution Control & Ecology’ or ‘Department,’ as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the ‘Arkansas Department of Environmental Quality’ is hereby established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise

all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

"(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change."

Pursuant to § 1-2-207, the amendment by Acts 1999, No. 1164 is deemed to be superseded by the amendment by Acts 1999, No. 1526.

Publisher's Notes. As to the repeal of former § 15-57-320, see the Publisher's Notes at the beginning of this subchapter.

U.S. Code. The reference in this section to § 401 of the Federal Clean Water Act is presumably a reference to § 401 of the Water Pollution Control Act, which is codified as 33 U.S.C. § 1341.

15-57-321. [Repealed.]

Publisher's Notes. As to the repeal of this section, see the Publisher's Note at the beginning of this subchapter.

SUBCHAPTER 4 — QUARRY OPERATION RECLAMATION, OPERATION, AND SAFE CLOSURE

SECTION.	SECTION.
15-57-401. Title.	15-57-408. Notifications of exhausted quarry.
15-57-402. Definitions.	15-57-409. Reclamation of land at exhausted quarry site.
15-57-403. Notification — Filing — Public notice and response.	15-57-410. Site safety.
15-57-404. Notification of intent to quarry.	15-57-411. Complaints of violations of this subchapter.
15-57-405. Notification of temporarily closed quarry.	15-57-412. Bond.
15-57-406. Notification of reactivated quarry.	15-57-413. Hearing.
15-57-407. Notification refiling required.	15-57-414. Distribution of fees, fines, and forfeiture amounts.

A.C.R.C. Notes. References to “this chapter” in subchapters 1-3 may not apply to this subchapter which was enacted subsequently.

15-57-401. Title.

This subchapter shall be known and may be cited as the “Arkansas Quarry Operation, Reclamation, and Safe Closure Act”.

History. Acts 1997, No. 1166, § 1.

15-57-402. Definitions.

- As used in this subchapter:
- (1) “Active” means a quarry wall where extraction is occurring or is planned to occur;
 - (2) “Affected land” means the area of land to the nearest acre, where the quarrying of stone, industrial activity, and the stockpiling of topsoil and spoil occur;
 - (3) “Citation” means a written warning of a violation that may be accompanied by a fine when given two (2) times for the same violation;
 - (4) “Commission” means the Arkansas Pollution Control and Ecology Commission, or such commission or other entity as may lawfully succeed to the powers and duties of the commission;
 - (5) “Default” means an operation that has uncorrected violations of the requirements of this subchapter which allows the Arkansas Department of Environmental Quality to forfeit the bond to have the site reclaimed as per the reclamation plan;
 - (6) “Department” means the Arkansas Department of Environmental Quality or such department or other entity which may lawfully succeed to the powers and duties of the department;
 - (7) “Director” means the executive head and active administrator of the Arkansas Department of Environmental Quality;

- (8) "Exhausted quarry" means a quarry where the stone is depleted;
- (9) "Fee" means the notification or annual operating payment made by the operator to the department. The amount cannot be changed except by legislative action. This fee will be payable on or before July 1 for all operating quarries in the current calendar year;
- (10) "Final floor" means the bottom surface created in a quarry;
- (11) "Final wall" means the last wall created in a quarry;
- (12) "Fine" means a penalty for noncompliance which may accompany a second citation, except as provided in other sections of this subchapter for specific violations. Fines are not retroactive, and the amounts cannot be changed except by legislative action;
- (13) "Inactive status" means the period of time a quarry is inactive or temporarily shutdown;
- (14) "Notification of intent" is the operator's proper notification to the department of the operator's intent to open a quarry, to temporarily close a quarry, to reactivate a quarry, and to shut down an exhausted quarry;
- (15) "Notification in process" means that a notification of intent is on file and incomplete;
- (16) "Operator" means any person engaged in or controlling a quarrying operation;
- (17) "Quarry" means an excavation or pit from which stone is removed;
- (18) The "quarry rim" means the top surface of the quarry behind the wall from which has been removed the topsoil and spoil;
- (19) "Reclamation plan" is a plan presented to the department by an operator detailing the reclamation and revegetation of lands affected by quarrying both contemporaneously and after the quarry is exhausted, and required by this subchapter;
- (20) "Spoil" means the unconsolidated boulders, soil and other naturally occurring materials which lie above a deposit of quarriable stone, which must be excavated from above a deposit so that extraction can begin;
- (21) "Start-up" means the date an operator begins site preparation for quarrying; and
- (22) "Topsoil" means the top strata of soil normally associated with the growth of vegetation. It is generally free of boulders, cobbles, or other floating rock and exhibits the growing properties normally associated with, at a minimum, the pasturing of cattle.

History. Acts 1997, No. 1166, § 2;
1999, No. 1164, § 141.

15-57-403. Notification — Filing — Public notice and response.

(a) It shall be unlawful for any operator to engage in a quarrying operation without first submitting to the Arkansas Department of Environmental Quality a "notification of intent to quarry" or a "notification of reactivated quarry" in accordance with this subchapter. The

submittal, with returned receipt, shall enable the operator to begin or continue quarrying as long as the required reclamation bond is in force and proof of public notification is included. An operator shall be deemed to be quarrying from the time he or she begins start-up until reclamation is completed at the exhausted quarry.

(b) Only new quarries or any land purchased or leased for a quarry after January 1, 1997, will be subject to this subchapter.

(c) There will be no requirements for a "notification of intent" to be filed with the department for temporarily closed or exhausted quarries in existence prior to January 1, 1998. These quarries will be exempt from the requirements of this subchapter unless reactivated.

(d) A new notification of intent to quarry shall be required if a change in the majority ownership of an operator occurs.

(e) Representatives of the department may make regular site visits to quarry operations, as necessary, to determine compliance with the requirements of the operator's notification. On these visits the operator will make his or her quarry operation accessible to the department.

(f) Upon receipt of notifications of intent, the department will have ninety (90) days to respond to the operator by certified mail to errors or omissions, or both, in the notifications.

(g) On completion of a notification, the department will issue the operator a notice which will be posted on quarry premises at all times when the quarry is in operation and which will state:

"Name of company has completed the requirements, as set out by the 'Arkansas Quarry Operation, Reclamation and Safe Closure Act' of 1997, and has the unconditional authorization to quarry at this site, so long as the quarry is in compliance with all laws and regulations for up to five (5) years."

(h) The department, upon finding the operator to be out of compliance with the requirements of his or her "notification" may issue warnings, citations, and notices of default to the operator.

(i) All filings and other communication will be by certified mail.

(j)(1)(A) An operator will give notice to the public in a local newspaper of general circulation that he or she intends to open or reactivate a quarry.

(B)(i) The notification will be part of an operator's intent and will be published in the newspaper at the same time the intent is filed with the department.

(ii) Proof of publication shall be provided to the department in the operator's notice of intent.

(C) The notification will indicate the approximate location of the quarry using section, township, and range plus a road address or identifiable local landmarks when possible, the date of start up and the date the operator plans to temporarily close, if applicable, as well as the operator's name, address, phone number, and contact person.

(D) The notification shall state that interested parties may contact the department for further information and that they have ten (10) days after publication of the notice to notify the department of any request for a public meeting.

(2)(A) If the department receives at least five (5) requests for a public meeting from owners of property within one-half ($\frac{1}{2}$) mile of the quarry, it may require that the operator hold a public meeting.

(B) This public meeting shall be held within two (2) weeks after the expiration of the ten-day public notice period.

(C) This public meeting shall be held in a location near the proposed quarry to allow the public to discuss their interests with the operator prior to start-up.

(3)(A) The operator will keep responses from the public on file for two (2) years.

(B) The department will forward responses it receives to the operator.

(4) The operator will keep a record of all action taken resulting from public responses for two (2) years, notifying the department of each action.

History. Acts 1997, No. 1166, § 3;
1999, No. 1320, § 1.

15-57-404. Notification of intent to quarry.

(a)(1) Except for operators of quarries excluded by § 15-57-403(a), any operator desiring to engage in quarrying shall complete a notification of intent to quarry which when submitted to the Arkansas Department of Environmental Quality by certified mail will entitle said operator to conduct quarry operations.

(2)(A) For all active quarries, as of January 1, 1998, a "notification of intent" must be on file or in process at the department.

(B) For all new quarries to be opened after January 1, 1998, a notification of intent must be on file or in process at the department before the operator may begin quarry operations.

(3) The notification shall be accompanied by the payment of a two hundred fifty dollar (\$250) fee.

(4) The submittal shall be an agreement between the operator and the department.

(5) The operator shall pay an annual fee to the department in the amount of twenty-five dollars (\$25.00) per acre of affected land, not to exceed one thousand dollars (\$1,000) per quarry.

(6) The notification of intent shall include one (1) copy of the following:

(A) The company name, officers, majority of ownership, onsite superintendents, addresses, name of quarry, phone numbers, anticipated start up and shut down dates;

(B) The following right to quarry, signed and notarized:

"I, the operator of [quarry name] located at [legal description in _____ county], have the legal right by deeds, leases, or other instruments to conduct quarry operations for commercial and other purposes at this location. I will comply with all state and federal laws and regulations in this operation.

Company Name

President

Secretary”;

(C) A location map which contains the following:

(i) A 7.5’ topographic quad map as prepared by the United States Geological Survey;

(ii) Clearly marked legal boundaries of area to be quarried;

(iii) Clearly defined entrances onto public roads;

(iv) Present use of the property; and

(v) A legal description.

(D) A five-year quarry operation map which contains the following:

(i) Scaled dimensions, that is, 1:200;

(ii) Approximate property boundaries;

(iii) The location and identification of all affected lands to the nearest acre, anticipated for up to five (5) years;

(iv) All pertinent manmade and natural structures including the plant location and the location of safeguarding items as required by § 15-57-410;

(v) Location of topsoil and spoil stockpiles;

(vi) Entrances onto public roads; and

(vii) Areas of natural rock exposure (no topsoil or spoil).

(E) Notification of intent to reclaim quarry.

“I, operator of [quarry name] located at [legal description in _____ County], agree to reclaim said described quarry in conformance with the Arkansas Quarry Operation, Reclamation, and Safe Closure Act, when the quarry is exhausted.

Company Name

President

Secretary”

(b) The operator’s financial plan for reclamation will include:

(1) An estimate of reclamation cost; and

(2) An acceptable bond or substitute security.

(c) All operators will have sixty (60) days to correct any errors or omissions to a notification of intent if notified by the department that a notification of intent is incomplete.

(d) A fine of not more than one hundred dollars (\$100) per day, per citation, may be levied against an operator whose notification of intent is not completed and on file in the department within sixty (60) days after receipt of notice by the department of errors and omissions in the first filing. The maximum fine is five thousand dollars (\$5,000).

(e) A fine of not more than one hundred dollars (\$100) per day, per citation, may be levied against operators which are found to be out of

compliance with these requirements. The maximum fine is five thousand dollars (\$5,000).

History. Acts 1997, No. 1166, § 4.

15-57-405. Notification of temporarily closed quarry.

(a) Quarry sites in which operations are only occasionally conducted and in which the operator anticipates future quarry activity can be shut down on a temporary basis. If so, the operator will file a notification of temporarily closed quarry with the Arkansas Department of Environmental Quality, within thirty (30) days after an operation is closed. Full reclamation will not be required until no further additional quarrying is anticipated or the quarry is exhausted. All operational safeguards, as described in this subchapter, will remain in place as required until the quarry is exhausted. The notification of temporarily closed quarry will contain the following:

(1) Same information as notification of intent to quarry per § 15-57-404(a); and

(2) Right to temporarily close as follows:

“I, operator of [quarry name], located at [legal description in _____ County], have the legal right by deeds, leases, or other instruments to temporarily close this quarry operation until such time as it becomes necessary to reactivate this operation. I will comply with all state and federal laws and regulations during this temporary closure and inactive status.”

(b) When an operator closes a quarry and fails to file a notification of temporarily closed quarry with the department within sixty (60) days, the department may levy a fine of not more than one hundred dollars (\$100) per day by citation until said notification is received. The maximum fine is five thousand dollars (\$5,000).

(c) If a notification of temporarily closed quarry is not received within ninety (90) days of the issuance of the citation, the department may declare that the quarry is in default and require the operator to reclaim the site as per the bonding and reclamation requirements or the department may forfeit the bond and issue a contract to have the site reclaimed as per the reclamation requirements.

History. Acts 1997, No. 1166, § 5.

15-57-406. Notification of reactivated quarry.

Prior to resuming operation in a temporarily closed quarry, an operator will notify the Arkansas Department of Environmental Quality by certified mail with a notification of reactivated quarry. This notification will consist of the resubmittal of the notification of intent along with any modifications required, necessary by changed conditions at the quarry site.

History. Acts 1997, No. 1166, § 6.

15-57-407. Notification refiling required.

(a) Every five (5) years all notifications of intent to quarry and of temporarily closed quarry must be refiled with the Arkansas Department of Environmental Quality by certified mail on or before the operator's anniversary date, with any modifications made necessary by changed conditions in the quarry site, such as changes in the affected acreage, majority ownership of the operator, changes in public roads and manmade structures adjacent to the quarry site, or new technology.

(b) For failure to refile a notification of intent or notification of temporarily closed quarry, departmental enforcement procedures, citations, and fines will be the same as for § 15-57-405.

History. Acts 1997, No. 1166, § 7.

15-57-408. Notifications of exhausted quarry.

(a) When a quarry becomes exhausted, the operator will notify the Arkansas Department of Environmental Quality by registered mail that the quarry is an exhausted quarry. This notification will contain the following:

(1) Updated information as required for the notification of intent to quarry per § 15-57-404(a)(1);

(2) The beginning date of quarry reclamation must be within six (6) months of the notification of exhausted quarry;

(3) The anticipated date reclamation will be completed. All earthwork and revegetation must be completed within the specified time. If revegetation is not approved, the operator will have another year to complete seeding, as required; and

(4) The quarry reclamation map should contain the following:

(A) Identification of all planned roads, water impoundments, final walls, final floors, unconsolidated slopes, quarry rims, areas to be revegetated, berms, other manmade structures, and unaffected areas;

(B) The map shall show planned reclamation according to the requirements of the reclamation plan; and

(C) The affected land acreage to be reclaimed will be shown to the nearest acre.

(b) If the operator fails to notify the department of this change of status, the department will notify the operator by citation. The operator will then have sixty (60) days to file said notification and commence with plans to reclaim quarry site as per the requirements of this subchapter.

(c) If the operator fails to file notification within the required sixty (60) days, the department may levy a fine of one hundred dollars (\$100) per day by citation to the operator until notification is received by the department. The maximum fine is five thousand dollars (\$5,000).

(d) If the operator fails to notify the department within sixty (60) days and the fine is in effect, then the department may declare the operator in default and order the operator to begin reclamation as

required or the department may forfeit bond and issue a contract to have the site reclaimed as per the reclamation plan.

History. Acts 1997, No. 1166, § 8.

15-57-409. Reclamation of land at exhausted quarry site.

(a) When the quarry is exhausted, the planned reclamation of all affected lands at the quarry site will be completed by the operator, his or her subcontractor, or by the Arkansas Department of Environmental Quality once the bond has been forfeited.

(b)(1) The minimum reclaimed condition of the exhausted quarry will be as a lake, pasture, timberland, or wetlands, or a combination thereof. Where preaffected lands consist of natural rock outcrops, floors, walls, and ledges, where no topsoil or minimal spoil exists, post-reclaimed land of approximately the same area may be left for self-revegetation within the total affected land to be reclaimed. Acreage of the preaffected lands will be calculated to the nearest acre. Exhausted highwalls and safety benches may be left for self-reclamation.

(2) All equipment, tools, manmade structures, and debris will be removed from affected lands or disposed of on property in a safe manner by mutual agreement between the operator and the landowner. The agreement will be on file at the operator's offices and sent to the department with notification of exhausted quarry.

(3) If uncovered spoil, earth, or rock formations cause acidic drainage, all acid-forming materials will be covered with at least three feet (3') of spoil and available topsoil, with topsoil in the top one foot (1'), and seeded as required by this subchapter.

(4) Available topsoil and spoil removed during quarrying will be stockpiled for use during reclamation. If either material is not available in quantities necessary for reclamation, then priority will be given to areas with acid-forming materials in subdivision (b)(2) of this section. If contemporaneous reclamation is ongoing, then the operator may reclaim in areas of his or her own discretion. Thickness of spoil may be varied, but in no case will the combined thickness be less than six inches (6"). Spoil and topsoil which are surplus to full reclamation may be disposed of at the discretion of the operator. No topsoil or dirt is required to be hauled from another location to the quarry site.

(5) Lime, fertilizer, and seeding will be completed as necessary to sustain growth over seventy-five percent (75%) of the affected area or a complete reseeding of bald spots will be required.

(6) If revegetation during reclamation is to be accomplished by planting of trees, the planting guideline of the Arkansas Forestry Commission shall be complied with. A fifty percent (50%) coverage is required after two (2) years. Otherwise, bald spots will be replanted.

(7) All erosion control will be covered under the operator's stormwater pollution prevention plan.

(8) Site process water quality, storage, handling, and discharge will be covered under the operator's National Pollutant Discharge Elimination System [NPDES] permit.

(9) Quarry site reclamation must be completed through the first seeding within one (1) year for quarry sites of less than fifty (50) acres, within two (2) years for quarry sites of more than fifty (50) acres and less than one hundred (100) acres, and within three (3) years for quarry sites of more than one hundred (100) acres and less than two hundred (200) acres. This time requirement for sites larger than two hundred (200) acres may be modified, at the discretion of the department, upon agreement with the operator.

(10) If an operator fails to begin reclamation during the first six (6) months after a quarry is exhausted, the department will notify the operator by citation of the above violation. If an operator then fails to begin reclamation within sixty (60) days after receiving the notification, the department may then issue a second citation. The second citation will be accompanied by a fine of not more than fifty dollars (\$50.00) per day until reclamation begins. If an operator's reclamation effort does not begin within sixty (60) days of the second citation and the fine is in force for that period, then the department will notify the operator that the operation is in default. The department will then use the proceeds of the operator's forfeited bond to have the quarry site reclaimed as per the reclamation plan.

History. Acts 1997, No. 1166, § 9.

15-57-410. Site safety.

The quarry operator will take the following measures to safeguard the operations for the benefit of neighbors and other citizens and to restrain trespassers from entering onto the quarry or plant site:

(1) One (1) or a combination of the following will be installed around the quarry and plant site to complement natural barriers to trespassing as required:

(A) A minimum four-foot high, four-strand barbed wire fence boundary attached to steel posts;

(B) A five-foot high earth berm or rock berm, or both, with slopes steeper than 1.5:1 and a minimum top width of five feet (5'); and

(C) A protective barrier of boulders, concrete, or other objects capable of discouraging pedestrian or vehicular traffic;

(2) Brightly colored warning signs (blaze orange is recommended) will be installed every three hundred feet (300') in clear view;

(3) Barriers or lockable gates capable of withstanding normal vandalism are to be installed at all quarry site entrances. During temporary closure and after full reclamation of an exhausted quarry, barriers of rock or securely locked gates will be installed at all entrances on safety benches and haul roads so that no traffic or dumping can occur on the affected lands or in the quarry itself;

(4) After January 1, 1998, no active quarry wall will be closer than fifty feet (50') to a public road right-of-way where the quarry's adjacent floor elevation is at or above the elevation of the right-of-way of the public road at the property line. Where active quarry floors are below

said right of way, quarrying will be permitted only after a vegetated berm a minimum of ten feet (10') high, eight feet (8') wide at the crest, and with 1.5:1 slopes is installed for public safety;

(5) After January 1, 1998, no active quarry wall will be closer than fifty feet (50') from any private property line unless written permission is given by the adjacent property owner. Permission will be on file at the operator's office and a copy will be sent to the Arkansas Department of Environmental Quality;

(6) Where truck traffic to and from the quarry site entrance creates a public safety nuisance because of fugitive dust, the operator will take the appropriate measures to treat the roadbed for dust control in the vicinity of the quarry entrance;

(7) Blasting will be regulated under present United States Department of Labor Mine Safety and Health Administration (MSHA) or state labor codes;

(8) Hazardous wastes will be regulated under the present hazardous waste codes;

(9) Active quarry and plant sites will have until January 1, 1998, to comply with the requirements of this section, except for subdivision (6) of this section. Requirements of subdivision (6) of this section are to be in force by July 1, 1997;

(10) If the Arkansas Department of Environmental Quality finds the operator to be out of compliance with any of the requirements of subdivisions (1), (2), and (3) of this section, a citation will be given to the operator to comply within ninety (90) days. If the operator fails to comply within the ninety-day time requirement or shows no effort to comply, the department may levy by citation a fine of not more than one hundred dollars (\$100) per day until the operator complies with said requirements. The maximum fine is five thousand dollars (\$5,000); and

(11) Any operator quarrying in violation of subdivisions (4) and (5) of this section will be subject to an immediate assessment of a fine of not more than one hundred dollars (\$100) per day or a shut down order by the Arkansas Department of Environmental Quality, or both. The order will stay in effect at the discretion of the Arkansas Department of Environmental Quality until the operator is no longer in violation.

History. Acts 1997, No. 1166, § 10.

15-57-411. Complaints of violations of this subchapter.

(a) The operator is required to document and respond to complaints by neighbors and citizens as they relate to the requirements of this subchapter. A record of the complaints and responses will be kept on file at the quarry office or company office for a minimum of two (2) years and sent to the Arkansas Department of Environmental Quality.

(b) Any complaints received by the department as they relate to this subchapter will be forwarded to the operator. The operator's response will be kept on file for future departmental review at the quarry office or the company office for a minimum of two (2) years.

(c) The department shall investigate complaints by neighbors and citizens to determine if violations of this subchapter have occurred.

History. Acts 1997, No. 1166, § 11.

15-57-412. Bond.

(a) In order to assure that all reclamation is completed as required and within a reasonable length of time, the operator shall submit a bond or substitute security used specifically for the quarry described in the legal description of the notification of intent. The bond or substitute security shall be in force prior to the operator commencing a new or reactivated quarry operation and in force for all active quarry operations by January 1, 1998.

(b)(1) As of January 1, 1998, the reclamation bond required for acceptance of an operator's notice of intent to open a quarry, or to reactivate a quarry, will be one thousand one hundred dollars (\$1,100) per acre of affected land. The face value of the bond will be evaluated every five (5) years by the operator and a representative of the Arkansas Department of Environmental Quality.

(2) In the event it is determined that the bond or substitute security is inadequate, the surety will be notified and the bond limits or amount of security will be increased. If the security is determined to be surplus, then the amount required will be decreased.

(c) Bonding or substitute security may be incrementally increased based on the annual acreage to be affected but must be sufficient in total to fund full reclamation as required by this subchapter.

(d) Bonding or substitute security shall be incrementally decreased as reclamation is completed. When final reclamation is completed, the remaining bond or substitute security will be released to the operator.

(e)(1) The operator may submit any of the following three (3) types of bonds or substitute security:

(A) A surety bond;

(B) A collateral bond with supporting collateral consisting of irrevocable letters of credit or certificates of deposit in favor of the department; and

(C) A self bond with an unencumbered right to certain property to be held by the department.

(2) Recommended bond forms shall be provided by the department. A variation of the language in all but the self bond form may be acceptable, provided the requirements of the subchapter and this Code are incorporated and the department approves the language.

(3) In the event self bonding is used, the following conditions apply:

(A) The applicant must use the self bond form provided by the department;

(B) The collateral to be offered must be appraised by a licensed appraiser approved by the operator and the department;

(C) The operator must have unencumbered ownership of the collateral and provide proof of such ownership to the department;

(D) The value of the collateral as bond will be eighty percent (80%) of the fair market value of the collateral as established by the appraiser;

(E) Any collateral that decreases in value due to usage (rolling stock) will be not be acceptable;

(F) In the event the collateral consists of real property, an environmental audit of the area must be provided to the department; and

(G) Where applicable, a lien will be filed against the collateral until the affected area is reclaimed and released by the Arkansas Pollution Control and Ecology Commission.

History. Acts 1997, No. 1166, § 12;
1999, No. 1320, § 2.

15-57-413. Hearing.

An operator may request and obtain an adjudicatory hearing and review by the Arkansas Pollution Control and Ecology Commission of any decision by the Director of the Arkansas Department of Environmental Quality to enforce the provisions of this subchapter, including any action to impose a civil penalty, stop quarrying activities, or forfeit a bond. The decision of the commission shall be final and may be appealed by the operator to the circuit court of the county in which the quarry is located in accordance with the Arkansas Code.

History. Acts 1997, No. 1166, § 13.

15-57-414. Distribution of fees, fines, and forfeiture amounts.

(a) The Arkansas Department of Environmental Quality shall collect fees, fines, and bond forfeiture amounts pursuant to this subchapter.

(b) These revenues, along with gifts, grants, donations, and other funds received under this subchapter, including all interest earned, shall be deposited in the Land Reclamation Fund established by § 15-57-319.

(c) The department shall use these funds pursuant to this subchapter for contract awards for the reclamation of affected lands as required by this subchapter.

(d) When accumulated funds equal the product of ten percent (10%) of the number of acres of affected lands times one thousand dollars (\$1,000), surplus funds shall be deposited into the State Treasury as general revenues.

History. Acts 1997, No. 1166, § 14.

CHAPTER 58

THE ARKANSAS SURFACE COAL MINING AND RECLAMATION ACT

SUBCHAPTER.

1. GENERAL PROVISIONS.
 2. ADMINISTRATION.
 3. VIOLATIONS AND PENALTIES.
 4. STATE ABANDONED MINE RECLAMATION PROGRAM.
 5. SURFACE COAL MINING REGULATION.
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Publisher's Notes. Acts 1991, No. 454, § 2, provided: "The provisions of this act expressly supersede those set out in Act 531 of 1989. This act does not supersede or affect in any way the Arkansas Surface Coal and Mining Act and implementing regulations as it impacts on the import of

past or pending violations upon surface coal mining operators."

The reference in Acts 1991, No. 454, § 2, to the Arkansas Surface Coal and Mining Act, may refer to the Arkansas Surface Coal Mining and Reclamation Act of 1979.

RESEARCH REFERENCES

Am. Jur. 54 Am. Jur. 2d, Mines, § 172 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 15-58-101. Title.
 - 15-58-102. Legislative findings.
 - 15-58-103. Declaration of policy.
 - 15-58-104. Definitions.
 - 15-58-105. Public agencies, utilities, and corporations.
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SECTION.

- 15-58-106. Exempt activities.
- 15-58-107. Water rights and replacement.

Publisher's Notes. Acts 1979, No. 134, § 36, provided for that act to become effective upon final approval by the Secretary of Interior of the state program to be established pursuant to Public Law 95-87, § 503. On February 15, 1979, the Commission on Pollution Control and Ecology was to immediately issue regulations pursuant to Acts 1979, No. 134, to ensure approval of the state program. The state program was approved by the Secretary of the Interior and Acts 1979, No. 134, became effective on November 1, 1980.

Cross References. Voluntary reclamation by landowners, § 15-57-201 et seq.

Effective Dates. Acts 1993, No. 737, § 6: Mar. 26, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the amendment of the definition of 'small operator' as defined in this act is essential in protecting the health and well being of the public. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of

the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 500, § 9: Mar. 1, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the development of a small operator assistance program which conforms to the requirements of Public Law 95-87 is imme-

diately necessary to the development, administration and enforcement of surface coal mining and reclamation program. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Ark. L. Notes. Looney, Handling Administrative Proceedings Before the Arkansas Pollution Control and Ecology De-

partment and Commission, 1988 Ark. L. Notes 23.

15-58-101. Title.

This chapter shall be known and may be cited as the "Arkansas Surface Coal Mining and Reclamation Act of 1979".

History. Acts 1979, No. 134, § 1; A.S.A. 1947, § 52-935.

15-58-102. Legislative findings.

The General Assembly of the State of Arkansas finds, and it is declared that:

(1) The extraction of coal from the earth by surface mining in this state is a significant economic activity, is an integral part of the growth and development of this state, and is important to supply energy to the people of this state. It is, therefore, essential to the people of this state to ensure the existence of an expanding and economically healthy surface and underground coal mining industry;

(2) The process of surface coal mining must be accomplished in a manner to reduce so far as practicable the adverse social, economic, and environmental effects of surface mining and to protect the general welfare, health, safety, and property rights of the people of this state;

(3) Because surface coal mining in this state takes place in areas where the terrain, climate, biological, chemical, and other physical conditions are peculiar to this state and because the Arkansas Department of Environmental Quality is familiar with these conditions, the department has the primary responsibility to develop, issue, and enforce regulations for surface mining and reclamation operations in this state pursuant to this chapter and in compliance with applicable federal laws and regulations;

(4) The Congress of the United States has enacted the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, which provides for the establishment of a nationwide program to regulate

surface coal mining and reclamation and which vests exclusive authority in the Department of the Interior over the regulation of surface coal mining and reclamation within the United States. Section 503 of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, provides that each state may assume and retain exclusive jurisdiction over the regulation of surface coal mining and reclamation operations within the state by obtaining approval of a state program of regulation which demonstrates that the state has the capability of carrying out the provisions and meeting the purposes of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87. Section 503 of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, further provides that a state wishing to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations within the state must have a state law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87; and

(5) The Congress of the United States has enacted the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, which provides for the establishment of a nationwide program to promote reclamation of mined areas in the country left without adequate reclamation to be funded by a reclamation fee paid by all surface coal mining operators. Section 402 of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, provides that each state may develop a state abandoned mine reclamation program to enable the state to develop and carry out projects for the reclamation of abandoned mines within the state. Upon approval of the state abandoned mine reclamation program by the Secretary of the Interior, fifty percent (50%) of the reclamation fee collected by the Secretary of the Interior from surface coal mining operations in this state will be allocated to this state to fund the state abandoned mine reclamation program. Section 405 of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, provides that, prior to approval of the state abandoned mine reclamation plan, the state must have adopted state legislation necessary to carry out the purposes of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87.

History. Acts 1979, No. 134, § 2; A.S.A. 1947, § 52-936; Acts 1999, No. 1164, § 142.

A.C.R.C. Notes. Acts 1997, No. 1219, § 2, provided: "Arkansas Department of Pollution Control & Ecology" renamed to 'Arkansas Department of Environmental Quality'.

"(a) Effective March 31, 1999, the 'Arkansas Department of Pollution Control & Ecology' or 'Department,' as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the 'Arkansas Department of Envi-

ronmental Quality' is hereby established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

"(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of

Pollution Control and Ecology prior to the effective date of the name change.”

U.S. Code. The Surface Mining Control and Reclamation Act of 1977, Public Law 95-87, referred to in this section, is

primarily codified as 30 U.S.C. § 1201 et seq. Sections 503, 402, and 405 of the act are codified as 30 U.S.C. §§ 1253, 1232, and 1235 respectively.

15-58-103. Declaration of policy.

The General Assembly of the State of Arkansas declares that it is the purpose of this subchapter to:

(1) Assure that the coal supply essential to society's energy requirements and to its economic and social well-being is provided;

(2) Establish a statewide program for surface coal mining and reclamation which is designed to protect society and the environment from the adverse effects of surface coal mining;

(3) Assure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances to the land are protected from unregulated surface mining operations;

(4) Assure that the surface mining operations are not conducted where reclamation as required by this subchapter is not feasible;

(5) Assure that surface coal mining operations are so conducted as to protect the environment;

(6) Assure that adequate procedures are undertaken to reclaim surface areas as contemporaneously as possible with the surface coal mining operations;

(7) Assure that appropriate procedures are provided for public participation in the development, revision, and enforcement of regulations, standards, reclamation plans, or programs established pursuant to this subchapter;

(8) Strike a balance between protection of the environment and agricultural productivity and the state's and the nation's need for coal as an essential source of energy;

(9) Assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations within the state by developing and implementing a state program pursuant to Public Law 95-87 which meets all the requirements of Section 503 of Public Law 95-87 and which thereby will enable the state to assume such exclusive jurisdiction;

(10) Promote reclamation of mined areas in this state, which were left without adequate reclamation prior to August 3, 1977, and which continue in their unreclaimed condition to substantially degrade the quality of the environment, prevent or damage the beneficial use of the land or water resources, or endanger the health or safety of the public by developing and implementing a state abandoned mine reclamation program pursuant to Public Law 95-87 which complies with the requirements for a state abandoned mine reclamation program set forth therein and which shall generally identify the areas to be reclaimed, the purposes for which the reclamation is proposed, the relationship of the lands to be reclaimed and of the proposed reclama-

tion to surrounding areas, the specific criteria for ranking and identifying projects to be funded, and by issuing regulations which will supply the legal authority and programmatic capability to perform such work in conformance with the provisions of Title IV, Public Law 95-87;

(11) Wherever necessary, exercise the full reach of state powers to ensure the protection of the public interest through effective control of surface coal mining and reclamation operations.

History. Acts 1979, No. 134, § 3; A.S.A. 1947, § 52-937.

U.S. Code. As to Public Law 95-87 and § 503 thereof, referred to in this section,

see note to § 15-58-102. Title IV of Public Law 95-87 is codified as 30 U.S.C. § 1231 et seq.

15-58-104. Definitions.

As used in this chapter:

(1) "Affected governmental agency" means an agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the surface coal mining operation, or is authorized to develop and enforce environmental standards with respect to that operation;

(2) "Coal" means all forms of coal, including lignite;

(3) "Commission" means the Arkansas Pollution Control and Ecology Commission or any department, commission, bureau, or agency as shall lawfully succeed to the powers and duties of the commission;

(4) "Department" means the Arkansas Department of Environmental Quality or any department, bureau, commission, or agency that shall lawfully succeed to the powers and duties of that department;

(5) "Director" means the executive head and active administrator of the Arkansas Department of Environmental Quality;

(6) "Fund" means the Abandoned Mine Reclamation Fund administered by the Secretary of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87. Moneys from the fund may be received by the department through a grant from the Secretary of the Interior pursuant to the state abandoned mine reclamation program;

(7) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of this chapter in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement;

(8) "Lands eligible for remining" means those lands that would otherwise be eligible for expenditures under § 15-58-401;

(9) "Operator" means any person, partnership, or corporation engaged in coal mining who removes or intends to remove more than two

hundred fifty (250) tons of coal from the earth by coal mining within twelve (12) consecutive calendar months in any one (1) location;

(10) "Person" means an individual, partnership, association, society, joint-stock company, firm, company, corporation, or other business organization;

(11) "Permit" means a permit to conduct surface coal mining and reclamation operations issued by the director;

(12) "Small operator" means an operator whose probable annual production at all locations will not exceed three hundred thousand (300,000) tons of coal per year;

(13) "State program" means a program established by the department and approved by the Secretary of the Interior pursuant to section 503 of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, to regulate surface coal mining and reclamation operations on lands within the state;

(14) "State abandoned mine reclamation program" means a plan established by the department and approved by the Secretary of the Interior pursuant to Title IV of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, to reclaim mined areas of the state which were left without adequate reclamation prior to August 3, 1977;

(15) "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incident to the reclamation of such operations;

(16) "Surface coal mining operations" means:

(A) Activities conducted on the surface of lands in connection with a surface coal mine and surface impacts incident to an underground coal mine. The activities include excavation for the purpose of obtaining coal, including such common methods as contours strip, auger, mountaintop removal, box cut, open pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching, or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, the loading of coal at or near the mine site; and

(B) The area upon which activities occur or where activities disturb the natural land surface. The area shall also include any adjacent land the use of which is incidental to those activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of activities and for haulage, and excavations, working, impoundments, dams, ventilation shafts, entry ways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to these activities;

(17) "Unanticipated event or condition" means an event or condition encountered in a remining operation that was not contemplated by the applicable surface coal mining and reclamation permit; and

(18) “Unwarranted failure to comply” means the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of this chapter or the regulations issued pursuant to this chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of a permit, this chapter, or the regulations issued pursuant to this chapter due to indifference, lack of diligence, or lack of reasonable care.

History. Acts 1979, No. 134, § 4; 1979, No. 647, § 1; A.S.A. 1947, § 52-938; Acts 1993, No. 737, § 1; 1995, No. 500, § 1; 1999, No. 1164, § 143.

A.C.R.C. Notes. Acts 1997, No. 1219, § 2, provided: “‘Arkansas Department of Pollution Control & Ecology’ renamed to ‘Arkansas Department of Environmental Quality’.

“(a) Effective March 31, 1999, the ‘Arkansas Department of Pollution Control & Ecology’ or ‘Department,’ as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the ‘Arkansas Department of Environmental Quality’ is hereby established, succeeding to the general powers and responsibilities previously assigned to the

Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

“(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change.”

U.S. Code. As to Public Law 95-87, referred to in this section, see note to § 15-58-102.

Cross References. Abandoned Mine Reclamation Fund, § 19-5-1028.

15-58-105. Public agencies, utilities, and corporations.

Any agency, unit, or instrumentality of federal, state, or local government, including any publicly owned utility or publicly owned corporation of federal, state, or local government, which proposes to engage in surface coal mining operations which are subject to the requirements of this chapter shall comply with the provisions of this chapter and the regulations issued pursuant to this chapter.

History. Acts 1979, No. 134, § 33; A.S.A. 1947, § 52-967.

15-58-106. Exempt activities.

The provisions of this chapter shall not apply to any of the following activities:

(1) The mining, surface or otherwise, of any minerals or materials other than coal. All minerals and materials other than coal shall, when applicable, be regulated according to the Arkansas Open-Cut Land Reclamation Act of 1977 (repealed);

(2) The extraction of coal by a landowner for his or her own noncommercial use from land owned or leased by him or her;

(3) The extraction of coal as an incidental part of federal, state, or local government-financed highway or other construction under regulations established by the Arkansas Pollution Control and Ecology Commission; or

(4) The extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent (16 $\frac{2}{3}$ %) of the tonnage of minerals removed for purposes of commercial use or sale or for coal exploration.

History. Acts 1979, No. 134, § 34; Open-Cut Land Reclamation Act [of 1991], A.S.A. 1947, § 52-968. § 15-57-301 et seq.

Cross References. The Arkansas

15-58-107. Water rights and replacement.

(a) Nothing in this chapter shall be construed as affecting in any way the right of any person to enforce or protect, under applicable law, his or her interest in water resources affected by a surface coal mining operation.

(b) The operator of a surface coal mine shall replace the water supply of an owner of interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where the supply has been affected by contamination, diminution, or interruption proximately resulting from the surface coal mine operation.

History. Acts 1979, No. 134, § 35; A.S.A. 1947, § 52-969.

SUBCHAPTER 2 — ADMINISTRATION

SECTION.

- 15-58-201. Department — Jurisdiction, powers, and duties.
- 15-58-202. Commission — Powers and duties.
- 15-58-203. Director — Powers and duties.
- 15-58-204. Adoption of rules and regulations.
- 15-58-205. Inspections.
- 15-58-206. Prohibition on enforcement personnel having financial interest.
- 15-58-207. Legislative hearing — Procedures.

SECTION.

- 15-58-208. Legislative hearing — Examiners.
- 15-58-209. Adjudicatory hearing — Application for review.
- 15-58-210. Adjudicatory hearing — Presiding officers.
- 15-58-211. Adjudicatory hearing — Procedures generally.
- 15-58-212. Judicial review.
- 15-58-213. Administrative and judicial review — Costs.

Effective Dates. Acts 1995, No. 500, § 9: Mar. 1, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the development of a small operator assistance program which conforms to the requirements of Public Law 95-87 is immediately necessary to the

development, administration and enforcement of surface coal mining and reclamation program. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

15-58-201. Department — Jurisdiction, powers, and duties.

(a) The Arkansas Department of Environmental Quality is designated as the official agency whose duty it is to establish policies and guidelines, to administer the guidelines contained in this chapter, and to institute other reasonable regulations and guidelines as they become necessary pursuant to this chapter. The rules and regulations may provide differing terms and provisions for particular conditions, particular mining techniques, types of coal, particular areas of the state, surface mines, and the surface impacts of underground mines or any other differences which appear relevant and necessary so long as the action taken is consistent with attainment of the general intent and purposes of this chapter.

(b) Exclusive jurisdiction over those aspects of surface coal mining and reclamation operations in this state regulated by the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, shall be vested in the department.

History. Acts 1979, No. 134, § 5; A.S.A. 1947, § 52-939; Acts 1999, No. 1164, § 144.

A.C.R.C. Notes. Acts 1997, No. 1219, § 2, provided: “‘Arkansas Department of Pollution Control & Ecology’ renamed to ‘Arkansas Department of Environmental Quality’.

“(a) Effective March 31, 1999, the ‘Arkansas Department of Pollution Control & Ecology’ or ‘Department,’ as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the ‘Arkansas Department of Environmental Quality’ is hereby established, succeeding to the general powers and responsibilities previously assigned to the

Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

“(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change.”

U.S. Code. Public Law 95-87, the Surface Mining Control and Reclamation Act of 1977, referred to in this section is primarily codified as 30 U.S.C. § 1201 et seq.

RESEARCH REFERENCES

Ark. L. Notes. Looney, Handling Administrative Proceedings Before the Arkansas Pollution Control and Ecology De-

partment and Commission, 1988 Ark. L. Notes 23.

15-58-202. Commission — Powers and duties.

(a) The authority shall be vested in the Arkansas Pollution Control and Ecology Commission to establish policies and guidelines and take such other actions as are necessary to ensure the development, administration, and enforcement of a state program which meets the requirements of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, and, in doing so, shall have the following duties and powers:

(1) To adopt, amend, and issue rules and regulations in accordance with the procedures set forth herein pertaining to surface coal mining

and reclamation operations in accordance with but no more restrictive than the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, consistent with the general intent and purposes of this chapter and consistent with but no more restrictive than the regulations issued by the Secretary of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, as required for the state to develop an approved state program and to assume and retain exclusive jurisdiction over the regulation of surface coal mining and reclamation operations pursuant to section 503 of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87;

(2) To adopt, amend, and issue rules and regulations in accordance with the procedures set forth in this subchapter pertaining to the reclamation of abandoned mines in this state in accordance with the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, as required for the state to develop an approved state abandoned mine reclamation program and to assume and retain exclusive jurisdiction over the regulation of abandoned mine reclamation in this state pursuant to Title IV of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87;

(3) To conduct administrative hearings and to perform all necessary functions pursuant thereto and exercise discretionary review pursuant to the provisions of this chapter over all aspects of surface coal mining and reclamation operations performed within this state;

(4) To designate lands unsuitable for all or certain types of surface coal mining in accordance with provisions of this chapter and the regulations issued pursuant to this chapter; and

(5) To perform other duties and acts required by and provided for in this chapter or reasonably necessary to carry out the purposes of this chapter or the regulations issued pursuant to this chapter.

(b) The commission shall have the authority to promulgate regulations to amend the provisions of this chapter when such amendments are permitted by an amendment to the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, subsequent to the enactment of this chapter.

History. Acts 1979, No. 134, §§ 5, 37; A.S.A. 1947, §§ 52-939, 52-971; Acts 1995, No. 500, § 2.

U.S. Code. As to Public Law No. 95-87 referred to in this section, see note to

§ 15-58-201. Section 503 of P.L. 95-87 is codified as 30 U.S.C. § 1253. Title IV of P.L. 95-87 is codified as 30 U.S.C. § 1231 et seq.

RESEARCH REFERENCES

Ark. L. Notes. Looney, Handling Administrative Proceedings Before the Arkansas Pollution Control and Ecology De-

partment and Commission, 1988 Ark. L. Notes 23.

15-58-203. Director — Powers and duties.

(a) The authority shall be vested in the Director of the Arkansas Department of Environmental Quality and such other persons as designated by the director to administer and enforce the provisions of this chapter. The director shall seek the accomplishment of the purposes of this chapter by all practicable and economically feasible methods, and in doing so, shall have the following duties and powers:

(1) To make those expenditures which he or she deems necessary to accomplish the purposes of this chapter;

(2) To issue permits and set permit fees pursuant to the provisions in this chapter;

(3) To conduct settlement conferences pursuant to the provisions in this chapter;

(4) To prepare and require permittees to prepare reports;

(5) To enter on and inspect a surface coal mining operation and all records related thereto which are subject to the provisions of this chapter upon presentation of appropriate identifying credentials;

(6) To issue or modify orders requiring an operator to take actions that are reasonably necessary to comply with this chapter or rules and regulations issued pursuant to this chapter;

(7) To issue an order ordering a cessation of surface coal mining or reclamation operations or revoking the permit of an operator who has failed to comply with an order of the director to take action required by this chapter or rules and regulations issued pursuant to this chapter; or, in the event the permit is revoked, to cause the operator's performance bond, cash, or collateral securities to be forfeited if it is determined that it is necessary to reclaim the area of land affected by the operator's surface coal mining operation;

(8) To require training, examination, and certification of persons engaging in or directly responsible for blasting or use of explosives in surface coal mining operations;

(9) To receive by gift, grant, donation, or otherwise any sum of money, or assistance from any person or the United States, its agencies, the State of Arkansas, or any agency or political subdivision thereof, for the enactment and enforcement of this chapter and the mining and reclamation of land affected by surface coal mining operations;

(10) To conduct, encourage, request, and participate in studies, surveys, investigations, research, experiments, training, and demonstrations by contract, grant, or otherwise;

(11) To collect and disseminate to the public, information considered reasonable and necessary for the proper enforcement of this chapter;

(12) To employ such officers, agents, employees, and professional personnel, including legal counsel, as the director deems necessary for the performance of his or her powers and duties, and to prescribe the powers and duties and to fix the compensation of officers, agents, employees, and professional personnel;

(13) To contract upon such terms as the director may agree upon for legal, financial, engineering, and other professional services necessary

to expedite the conduct of the affairs of the Arkansas Department of Environmental Quality under the provisions of this chapter;

(14) To enter into cooperative projects or contracts with federal agencies, state boards, agencies, and soil and water conservation districts having expertise for the purposes of obtaining professional and technical services necessary to implement the provisions of this chapter; and to transfer funds to those boards, agencies, or districts;

(15) To enter into a cooperative agreement with the Secretary of the Interior to provide for state regulation of surface coal mining and reclamation operations on federal lands within this state;

(16) To represent the state in all matters involving or affecting the interest of the state and its residents relative to the proceedings before any federal agencies, officers, and congressional committees, and in all judicial actions arising out of the proceedings of such agencies, offices, and committees, or in relation thereto, and to appear in the courts and before agencies of this state or in other states in order to carry out the purposes of this chapter;

(17) To commence and prosecute all forms of legal actions as may be necessary to carry out the purposes of this chapter, including legal actions against the Secretary of the Interior and the Office of Surface Mining Reclamation and Enforcement;

(18) To establish for the purpose of avoiding duplication a process for coordinating inspections and the review and issuance of permits for surface coal mining and reclamation operations with any other federal or state permit process applicable to the proposed operations;

(19) To submit to the Secretary of the Interior a state abandoned mine reclamation program, annual projects which will carry out the purpose of the state abandoned mine reclamation program, and other reports as the Secretary of the Interior may require or as may be necessary in the administration of the state abandoned mine reclamation program; and to submit to the Congress of the United States annual reports on January 1 of each year on operations under the state abandoned mine reclamation program, together with recommendations as to further uses of the fund;

(20) To apply for, receive, and segregate the state abandoned mine reclamation funds into a special account, to spend the moneys in accordance with the provisions of this chapter and the regulations issued by the commission, and to prepare and submit to the Secretary of the Interior information as required in the administration of the state abandoned mine reclamation program;

(21) To sell land acquired pursuant to the state abandoned mine reclamation program by public sale under a system of competitive bidding at not less than fair market value and in accordance with regulations issued by the commission;

(22) To construct and operate plants for the control and treatment of water pollution resulting from mine drainage; and

(23) To perform other duties and acts required by and provided for in this chapter or reasonably necessary to carry out the purposes of this chapter or the regulations issued pursuant to this chapter.

(b) The director shall have the right to grant variances to the requirements of this chapter and the regulations issued pursuant to this chapter in the issuance of any permit pursuant to this chapter or, upon application of a permittee to amend an issued permit to allow a variance when variances are permitted by an amendment to the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, subsequent to the enactment of this chapter.

History. Acts 1979, No. 134, §§ 5, 37; A.S.A. 1947, §§ 52-939, 52-971; Acts 1999, No. 1164, § 145.

A.C.R.C. Notes. Acts 1997, No. 1219, § 2, provided: “Arkansas Department of Pollution Control & Ecology’ renamed to ‘Arkansas Department of Environmental Quality’.

“(a) Effective March 31, 1999, the ‘Arkansas Department of Pollution Control & Ecology’ or ‘Department,’ as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the ‘Arkansas Department of Environmental Quality’ is hereby established, succeeding to the general powers and responsibilities previously assigned to the

Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

“(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change.”

U.S. Code. As to Public Law 95-87, referred to in this section, see note to § 15-58-201.

15-58-204. Adoption of rules and regulations.

(a) Prior to the adoption, amendment, or repeal of any rule or regulation, the Arkansas Pollution Control and Ecology Commission shall give public notice and the opportunity for a legislative public hearing pursuant to §§ 15-58-207 and 15-58-208.

(b) If the commission finds that imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than twenty (20) days’ notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing, or upon any abbreviated notice and hearing that it may choose, to adopt an emergency rule or regulation. The rule or regulation may be effective for no longer than one hundred twenty (120) days.

(c) Any person shall have the right to petition for the issuance, amendment, or repeal of any rule or regulation. Within ninety (90) days after submission of a petition, the agency shall either deny the petition, stating in writing its reasons for the denial, or shall initiate rulemaking proceedings in accordance with subsection (a) of this section.

(d) The commission shall file with the Governor and the Secretary of State a certified copy of each rule or regulation adopted by it. The Secretary of State shall keep a permanent register of the rule or regulation open to public inspection. Each rule or regulation shall be effective twenty (20) days after filing, unless a later date is specified by law or in the rule or regulation itself. However, an emergency rule or regulation may become effective immediately upon filing or at a stated time less than twenty (20) days thereafter if the agency finds that this

effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of the reasons therefor shall be filed with the rule or regulation. The agency shall take appropriate measures to make emergency rules or regulations known to the persons who may be affected by them.

(e) No rule or regulation shall be valid unless adopted and filed in substantial compliance with this chapter.

History. Acts 1979, No. 134, § 27;
A.S.A. 1947, § 52-961.

15-58-205. Inspections.

(a) The Director of the Arkansas Department of Environmental Quality shall require such monitoring and reporting, shall cause to be made such inspections of any surface coal mining and reclamation operations, shall require the maintenance of such signs and markers, and shall take such other actions as are necessary to administer, enforce, and evaluate the administration of this chapter and to meet the state program requirements. For these purposes, the director or his or her authorized representatives, upon presentation of appropriate identifying credentials, shall have a right of entry to, upon, or through any surface coal mining and reclamation operations and, at reasonable times and without delay, may have access to and copy any records and inspect any monitoring equipment or method of operation required under this chapter or the regulations issued pursuant to this chapter.

(b) The Arkansas Pollution Control and Ecology Commission shall issue regulations which provide for informing the operator of violations detected by an inspector, for making public all inspection and monitoring reports and other records and reports adequate to enforce the requirements of and to carry out the terms and purpose of this chapter. The regulations shall also provide at a minimum for inspections without prior notice to the permittee or his or her agents or employees, except for necessary on site meetings with the permittee, on an irregular basis averaging not less than one (1) partial inspection per month and one (1) complete inspection per calendar quarter for the surface coal mining and reclamation operation covered by the permit.

(c)(1) Any person who is, or may be, adversely affected by a surface coal mining operation may notify the director or any representative of the director in writing of any violation of this chapter which he or she has reason to believe exists at the surface mining site.

(2) Any person who is or may be adversely affected by a surface coal mining operation may notify the director or the commission of any failure on behalf of the Arkansas Department of Environmental Quality to make proper inspections, after which the director, the commission, or their authorized representatives shall determine whether adequate and complete inspections have been made.

(3) The commission shall by regulation establish procedures ensuring that adequate and complete inspections have been made and for the

review of reports from interested persons. The regulations shall provide that the interested persons are furnished a written statement of the reasons for the final disposition of the matter.

History. Acts 1979, No. 134, § 16; 1979, No. 647, § 3; A.S.A. 1947, § 52-950; Acts 1999, No. 1164, § 146.

A.C.R.C. Notes. Acts 1997, No. 1219, § 2, provided: “‘Arkansas Department of Pollution Control & Ecology’ renamed to ‘Arkansas Department of Environmental Quality’.

“(a) Effective March 31, 1999, the ‘Arkansas Department of Pollution Control & Ecology’ or ‘Department,’ as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the ‘Arkansas Department of Environmental Quality’ is hereby established,

succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

“(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change.”

15-58-206. Prohibition on enforcement personnel having financial interest.

(a) No person performing any function or duty under this chapter shall have a direct or indirect financial interest in any underground or surface coal mining operation. Whoever knowingly violates the provisions of this subsection shall, upon conviction, be punished by a fine of not more than two thousand five hundred dollars (\$2,500), or by imprisonment of not more than one (1) year, or by both;

(b) The commission shall publish regulations to establish methods by which the provisions of this section will be monitored and enforced, including appropriate provisions for the persons to file for the director’s review, statements, and supplements thereto concerning any financial interest which may be affected by this section.

(c) Any member of the commission who has a direct or indirect financial interest in an underground or surface coal mining operation may continue to serve on the commission but shall abstain from participating in any matter that relates to underground or surface coal mining operations.

History. Acts 1979, No. 134, § 17; A.S.A. 1947, § 52-951.

15-58-207. Legislative hearing — Procedures.

(a) The Director of the Arkansas Department of Environmental Quality or the Arkansas Pollution Control and Ecology Commission shall give public notice of each of the following pending, proposed, or requested actions:

(1) The director, upon receipt of any completed application for an initial or revised permit or renewal thereof pursuant to §§ 15-58-502 — 15-58-508;

(2) The director, upon receipt of any request by an operator for a variance or amendment to an issued permit pursuant to §§ 15-58-502 — 15-58-508;

(3) The commission, upon receipt of any proposal for the designation of lands as unsuitable for surface mining pursuant to § 15-58-501;

(4) The commission, upon receipt of any proposal for the use of land acquired pursuant to the state abandoned mine reclamation program; or

(5) The commission, in any rulemaking proceeding pursuant to § 15-58-204.

(b) Notice shall be circulated in accordance with the regulations issued by the commission to inform interested and potentially interested persons of the pending action.

(c) Interested persons shall be afforded a period of not less than thirty (30) days after the last publication of the above notice to submit written objections or comments. Comments and objections shall be immediately transmitted to the applicant or permittee and shall be made available to the public. If a legislative hearing is requested by an interested person on or before ten (10) days of receipt of the objections and in accordance with the regulations issued by the commission, public notice shall be given in accordance with the regulations issued by the commission. A legislative hearing shall be held for the purpose of receiving relevant evidence.

(d) Any person shall be permitted to submit oral or written statements concerning the subject matter of the public hearing, to call witnesses who may present oral statements, and to present recommendations as to an appropriate decision.

(e) An electronic or stenographic record shall be made of the hearing, unless waived by all parties. All written statements and similar data offered in evidence shall be, subject to exclusion by the examiner for reasons of redundancy, received in evidence and shall constitute part of the record.

(f) If a legislative public hearing is held pursuant to this section, the director or the commission shall grant or deny, in whole or in part, the requested or proposed action and shall give public notice of its decision within sixty (60) days of the conference.

(g) If there has been no legislative public hearing held pursuant to this section, the director or the commission shall grant or deny, in whole or in part, the requested or proposed action within a reasonable time and in accordance with regulations issued by the commission. Parties shall be notified by mail with a copy of the decision. Public notice shall be given of the decision in accordance with the regulations issued by the commission.

(h) Within thirty (30) days of the public notice of the final decision of the director or the commission, any person with an interest which is or may be adversely affected may request review of the reasons for the final determination of the director or the commission in accordance with this chapter.

History. Acts 1979, No. 134, § 28;
A.S.A. 1947, § 52-962.

15-58-208. Legislative hearing — Examiners.

(a) For the purpose of receiving and responding to written comments and objections and for presiding at a legislative public hearing, the Arkansas Pollution Control and Ecology Commission or the Director of the Arkansas Department of Environmental Quality may designate one (1) or more examiners.

(b) An examiner shall have the power:

(1) To set the time and location of the public hearing. Public notice of the information shall be circulated in accordance with regulations issued by the commission;

(2) To receive all information submitted pursuant to the pending action and to permit or deny cross-examination of witnesses;

(3) To recommend denial or approval, in whole or in part, of the proposed or requested action;

(4) To maintain order at the public hearing;

(5) Generally to guide the course of the public hearing;

(6) To arrange with the applicant, upon request of any party, access to the mining area for the purpose of gathering information relevant to the proceeding.

History. Acts 1979, No. 134, § 28;
A.S.A. 1947, § 52-962.

15-58-209. Adjudicatory hearing — Application for review.

(a) A permittee or any person having an interest which is, or may be, adversely affected by the following may apply to the Arkansas Pollution Control and Ecology Commission for an adjudicatory review of the specified determination, request, notice, order, or decision:

(1) A final determination regarding the amount of a lien imposed upon land reclaimed pursuant to § 15-58-404;

(2) A final determination to issue or deny an initial or revised permit or renewal thereof, or to amend or vary the terms of a permit pursuant to §§ 15-58-207, 15-58-208, or 15-58-502 — 15-58-508 if a legislative public hearing was held;

(3) A request by an operator for reduction or release of performance bond pursuant to § 15-58-509;

(4) Any notice of violation, cessation order, or order to show cause issued pursuant to §§ 15-58-301 — 15-58-303;

(5) The assessment of a civil penalty pursuant to § 15-58-307;

(6) Any other final order or decision of the commission, the director, or their authorized representatives for which review is not otherwise provided in this chapter; or

(7) By any modification, vacation, or termination of the determination, request, notice, order, or decision.

(b) Application for review must be made within thirty (30) days of official notification of the action taken in subsection (a) of this section or within thirty (30) days after the director or his or her authorized agent issues his or her decision pursuant to the informal mine site hearing provided in §§ 15-58-301(c) and 15-58-302 as determined in regulations issued by the commission.

History. Acts 1979, No. 134, § 29; 1979, No. 647, § 10; A.S.A. 1947, § 52-963.

15-58-210. Adjudicatory hearing — Presiding officers.

(a) The following persons shall preside at an adjudicatory public hearing:

(1) One (1) or more members of the Arkansas Pollution Control and Ecology Commission; or

(2) One (1) or more examiners or referees designated by the commission.

(b) All presiding officers and all officers participating in decisions shall conduct themselves in an impartial manner and may at any time withdraw if they deem themselves disqualified. No examiner may participate in a proceeding in which he or she has participated as or on behalf of the charging party in such proceeding. Any party may file an affidavit of personal bias or disqualification, which shall be ruled on by the commission and granted if timely, sufficient, and filed in good faith.

(c) Presiding officers at a public hearing shall have power:

(1) To set the time and place for the public hearing in accordance with regulations issued by the commission;

(2) To issue subpoenas for the attendance and testimony of witnesses and the production of documents or things and to issue the subpoena forthwith on the written application by any party therefor;

(3) To administer oaths and affirmations and permit cross-examination;

(4) To take evidence, including, but not limited to, inspections of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity;

(5) To maintain order;

(6) To rule upon all questions arising during the course of a hearing or proceeding;

(7) To permit discovery by deposition or otherwise;

(8) To hold conferences for the settlement or simplification of issues;

(9) To grant stays or temporary relief under conditions they prescribe in accordance with regulations issued by the commission pursuant to this chapter;

(10) To recommend a final adjudicatory decision to the commission or, if the commission so designates, to issue a final adjudicatory decision which shall be the decision of the commission; and

(11) Generally to regulate and guide the course of the pending proceeding.

History. Acts 1979, No. 134, § 29; 1979, No. 647, § 10; A.S.A. 1947, § 52-963.

15-58-211. Adjudicatory hearing — Procedures generally.

(a) In any adjudicatory public hearing, if a person refuses to respond to a subpoena, refuses to take the oath or affirmation as a witness, or thereafter refuses to be examined, the Arkansas Pollution Control and Ecology Commission, its authorized representative, or the presiding officer of the hearing may apply to any court of general jurisdiction in the county where the proceedings were held or are being held for an order directing that person to take the requisite action. The court shall issue the order in its discretion. Should any person willfully fail to comply with an order so issued, the court shall punish him or her as for contempt.

(b) Opportunity shall be afforded all parties at a public hearing to respond and present evidence and argument on all issues involved.

(c) Nothing in this chapter shall prohibit disposition of the matter through an informal conference before the Director of the Arkansas Department of Environmental Quality if all parties agree, or disposition by stipulation, settlement, consent order, or default.

(d) The record of a public hearing required by this section shall include:

- (1) All pleadings, motions, and intermediate rulings;
- (2) Evidence received or considered, including, on request of any party, a transcript of oral proceedings or any part thereof;
- (3) A statement of matters officially noticed;
- (4) Offers of proof, objections, and rulings thereon;
- (5) Proposed findings and exceptions thereto; and
- (6) All staff and presiding officer memoranda or data submitted to the presiding officer in connection with his or her consideration of the case.

(e) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

(f) Any person compelled to appear at a public hearing shall have the right to be accompanied and advised by counsel. Parties shall have the right to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(g) Except as otherwise provided by law, the person contesting a notice, order, or decision in an adjudicatory public hearing shall have the burden of proof. Irrelevant, immaterial, and unduly repetitious evidence shall be excluded. Any other oral or documentary evidence, not privileged, may be received if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted of record. When a hearing will be expedited and the interests of the parties will not be substantially prejudiced, any part of the evidence may be received in written form.

(h) Official notice may be taken of judicially cognizable facts and of generally recognized technical or scientific facts within the commission's specialized knowledge. Parties shall be notified of material so noticed, including any staff memoranda or data, and shall be afforded a reasonable opportunity to show to the contrary.

(i) A final decision or order of the commission shall be issued within thirty (30) days after the adjudicatory public hearing held and shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Parties shall be served either personally or by mail with a copy of any decision or order.

(j) The final order of assessment of a civil penalty whether by order of the commission after hearing, or by order of the director if the operator fails to petition for review of the assessment within the time provided herein shall constitute, upon filing the order with the circuit clerk of the appropriate county, a judgment against the operator which may be recovered in any manner provided by law for collection of a judgment.

(k) Any party adversely affected by the final order or decision of the commission may obtain judicial review of that decision in accordance with § 15-58-212.

History. Acts 1979, No. 134, § 29; 1979, No. 647, § 10; A.S.A. 1947, § 52-963.

15-58-212. Judicial review.

(a) Any person who participated in the administrative proceeding may institute proceedings for judicial review by filing a petition in the Pulaski County Circuit Court or in the circuit court of any county in which the involved surface coal mining operation is located within thirty (30) days after service upon petitioner of the Arkansas Pollution Control and Ecology Commission's final decision if that person is aggrieved by:

(1) The final order or the decision rendered in an adjudicatory hearing under §§ 15-58-209 — 15-58-211;

(2) The final decision of the commission on a petition to designate lands unsuitable for all or certain types of surface coal mining pursuant to §§ 15-58-207 and 15-58-208;

(3) The final decision of the commission regarding the use of lands under the State Abandoned Mine Reclamation Program pursuant to §§ 15-58-207 and 15-58-208; or

(4) The promulgation of rules or regulations by the commission pursuant to §§ 15-58-207 and 15-58-208.

(b) Copies of the petition shall be served upon the agency and all other parties of record by personal delivery or by mail.

(c) The court, in its discretion, may permit other interested persons to intervene.

(d) Any petition for judicial review of the assessment of a civil penalty shall be accompanied by a bond, with sufficient surety in the amount of the penalty, plus interest at the rate of ten percent (10%) per annum.

(e) The filing of the petition shall not automatically stay enforcement of the commission's action, but the reviewing court may do so if:

(1) All parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;

(2) The person requesting the relief shows that there is a substantial likelihood that he or she will prevail on the merits of the final determination of the proceeding; and

(3) The relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources.

(f) Within thirty (30) days after service of the petition or within such further time as the court may allow, but not exceeding an aggregate of ninety (90) days, the commission shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

(g) If, before the date set for hearing, application is made to the court for leave to present additional evidence and the court finds that the evidence is material and that the evidence could not with reasonable diligence have been discovered and produced at the administrative hearing, the court may order that the additional evidence be taken before the commission upon such conditions as may be just. The commission may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

(h) The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the commission, not shown in the record, testimony may be taken before the court. The court shall, upon request, hear oral argument and receive written briefs.

(i) The court may affirm the decision of the commission or remand the case for further proceedings. It may reverse or modify the decision if the substantial rights of the petitioner have been prejudiced because the commission's findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional provisions or the provisions of this chapter;

(2) In excess of the authority granted in this chapter;

(3) Not supported by substantial evidence of record; or

(4) Arbitrary, capricious, or characterized by abuse of discretion.

History. Acts 1979, No. 134, § 30;
A.S.A. 1947, § 52-964.

CASE NOTES

Cited: In re Sugarloaf Mining Co., 310
Ark. 772, 840 S.W.2d 172 (1992).

15-58-213. Administrative and judicial review — Costs.

Whenever an order is issued as a result of a public hearing under this chapter at the request of any person, a sum equal to the aggregate amount of all costs and expenses, including attorney's fees, reasonably incurred by that person, for or in connection with his or her participation in such proceeding, including any judicial review of any agency action, may be assessed against either party, as the circuit court, resulting from judicial review, or the Arkansas Pollution Control and Ecology Commission, resulting from administrative proceedings, deems proper.

History. Acts 1979, No. 134, § 31;
A.S.A. 1947, § 52-965.

SUBCHAPTER 3 — VIOLATIONS AND PENALTIES

SECTION.

- 15-58-301. Violations not causing imminent danger or harm — Cessation order.
- 15-58-302. Conditions, practices, and violations causing imminent danger or harm — Cessation order.
- 15-58-303. Pattern violations — Order to show cause.
- 15-58-304. Violating a condition of a permit or order — Criminal penalties.

SECTION.

- 15-58-305. Interfering with the director or his or her agents — Criminal penalties.
- 15-58-306. False statement, representation, or certification — Criminal penalties.
- 15-58-307. Civil penalties generally.
- 15-58-308. Civil actions — Injunctions, etc.
- 15-58-309. Right of private action.

Effective Dates. Acts 1981, No. 328, § 2: Mar. 5, 1981. Emergency clause provided: "It has been found and is declared by the General Assembly of Arkansas that there is an urgent need to provide for the protection of the Director or his authorized agents in their performance of the various duties and responsibilities under

this Act, and that there is a need to provide for such protection immediately to carry out the purposes of this Act. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the preservation of the public peace, health, and safety, shall take effect and be in force from the date of its approval."

15-58-301. Violations not causing imminent danger or harm — Cessation order.

(a) If the Director of the Arkansas Department of Environmental Quality or his or her authorized representative determines on the basis of an inspection or other available information that a permittee is in violation of a requirement of this chapter or of the regulations issued pursuant to this chapter or a permit condition required by this chapter or the regulations issued pursuant to this chapter but the violation does not create an imminent danger to the health or safety of the public or is not causing or reasonably expected to cause significant imminent environmental harm to land, air, or water resources, the director or his or her authorized representative shall issue a notice of violation to the permittee or his or her agent fixing a reasonable time, but not more than ninety (90) days, for the abatement of the violation in accordance with the procedures set out in regulations issued by the Arkansas Pollution Control and Ecology Commission pursuant to this chapter.

(b) If, on expiration of the period of time as originally set in the notice of violation for abatement of the violation, or as subsequently extended, for good cause shown, and on written findings of the director or his or her authorized representative, the director or his or her authorized agent finds that the violation has not been abated, he or she shall immediately issue a cessation order for surface mining operations in accordance with the procedures set out in regulations issued by the commission pursuant to this chapter on that portion of the area relevant to the violation.

(c) The cessation order shall remain in effect until the director or his or her authorized agent determines that the violation has been abated or until modified, vacated, or terminated by the director or his or her authorized agent. The cessation order shall expire within thirty (30) days of actual notice to the operator unless an informal hearing is held in accordance with regulations issued by the commission at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of the public hearing.

(d) The operator or any person adversely affected by the issuance of a cessation order or a modification, vacation, or termination of the order may, within thirty (30) days after the director or his or her authorized agent issues his or her decision pursuant to the informal hearing at the mine site, request an adjudicatory public hearing pursuant to §§ 15-58-209 — 15-58-211.

(e) The cessation order issued by the director or his or her authorized agent under this section shall designate the steps necessary to abate the violation in the most expeditious manner possible and shall include the necessary abatement measures.

History. Acts 1979, No. 134, § 22; § 2, provided: “‘Arkansas Department of 1979, No. 647, § 6; A.S.A. 1947, § 52-956; Pollution Control & Ecology’ renamed to Acts 1999, No. 1164, § 147. ‘Arkansas Department of Environmental

A.C.R.C. Notes. Acts 1997, No. 1219, Quality’.

“(a) Effective March 31, 1999, the ‘Arkansas Department of Pollution Control & Ecology’ or ‘Department,’ as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the ‘Arkansas Department of Environmental Quality’ is hereby established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkan-

sas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

“(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change.”

15-58-302. Conditions, practices, and violations causing imminent danger or harm — Cessation order.

(a) If the Arkansas Department of Environmental Quality or his or her authorized representative determines, on the basis of an inspection or other available information, that a condition or practice exists or that a permittee is in violation of a requirement of this chapter or of the regulations issued pursuant to this chapter or of a permit condition required by this chapter or the regulations issued pursuant to this chapter, and that this condition, practice, or violation also creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant imminent environmental harm to land, air, or water resources, the director or his or her authorized representative or agent shall immediately issue a cessation order in accordance with the procedures set out in regulations issued by the Arkansas Pollution Control and Ecology Commission pursuant to this chapter requiring the immediate termination of all surface coal mining and reclamation operations or the portion thereof relevant to the condition, practice, or violation.

(b) The cessation order shall remain in effect until the director or his or her authorized representative determines that the condition, practice, or violation has been abated or until the order has been modified, vacated, or terminated by the director or his or her authorized representative. The cessation order shall expire within thirty (30) days of actual notice to the operator unless an informal hearing is held in accordance with regulations issued by the commission at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of public hearing.

(c) The operator or any person adversely affected by the issuance of a cessation order or a modification, vacation, or termination of the order may, within thirty (30) days after the director or his or her authorized agent issues his or her decision pursuant to the informal hearing at the mine site request an adjudicatory public hearing pursuant to §§ 15-58-209 — 15-58-211.

(d) Where the director or his or her authorized representative finds that the ordered cessation of surface coal mining and reclamation operations or any portion thereof will not completely abate the imminent danger to health or safety of the public or the significant imminent environmental harm to land, air, or water resources, the director or his

or her authorized representative shall, in addition to and as part of the cessation order, impose affirmative obligations on the operator requiring him or her to take whatever steps are deemed necessary to abate the imminent danger of the significant environmental harm.

History. Acts 1979, No. 134, § 23; 1979, No. 647, § 7; A.S.A. 1947, § 52-957.

15-58-303. Pattern violations — Order to show cause.

(a) On the basis of an inspection, if the Director of the Arkansas Department of Environmental Quality or his or her authorized agent has reason to believe that a pattern of violations of any requirements of this chapter or the regulations issued pursuant to this chapter or any permit conditions required by this chapter or by the regulations issued pursuant to this chapter exists or has existed and if the director or his or her authorized agent also finds that these violations are caused by the unwarranted failure of the permittee to comply with requirements of this chapter or permit conditions or that the violations are willfully caused by the permittee, the director or his or her authorized agent shall issue to the permittee forthwith an order to show cause as to why the permit should not be suspended or revoked in accordance with the procedures set out in regulations issued by the Arkansas Pollution Control and Ecology Commission pursuant to this chapter.

(b) The order to show cause shall set a time and place for a public hearing to be held pursuant to §§ 15-58-209 — 15-58-211.

(c) On failure of a permittee to show cause why the permit should not be suspended or revoked, the commission or its authorized representative shall promptly suspend or revoke the permit.

History. Acts 1979, No. 134, § 24; A.S.A. 1947, § 52-958.

15-58-304. Violating a condition of a permit or order — Criminal penalties.

(a) Any person who willfully and knowingly violates a condition of a permit issued under this chapter or fails or refuses to comply with an order authorized by §§ 15-58-301 — 15-58-303 or any order incorporated in a final decision issued by the Arkansas Pollution Control and Ecology Commission or its authorized representative pursuant to this chapter and the regulations issued pursuant to this chapter or any person engaging in surface coal mining operations without a permit issued under this chapter shall be guilty of a misdemeanor and may be upon conviction punished by a criminal penalty of not more than ten thousand dollars (\$10,000) or by imprisonment for not more than one (1) year, or by both. Each day during which violation or noncompliance exists shall be deemed to be a separate violation.

(b) If a corporate permittee violates a condition of a permit issued under this chapter or fails or refuses to comply with an order issued

pursuant to §§ 15-58-301 — 15-58-303 or any order incorporated in a final decision issued by the commission or its authorized representative pursuant to this chapter and the regulations issued pursuant to this chapter, a director, officer, or agent of the corporation who willfully and knowingly authorized, ordered, or carried out the violation, failure, or refusal shall be guilty of a misdemeanor and upon conviction may be punished by a criminal penalty of not more than ten thousand dollars (\$10,000) or by imprisonment for not more than one (1) year or by both. Each day during which the violation or noncompliance exists shall be deemed to be a separate violation.

History. Acts 1979, No. 134, §§ 19, 20; 1979, No. 647, § 5; 1981, No. 328, § 1; A.S.A. 1947, §§ 52-953, 52-954.

15-58-305. Interfering with the director or his or her agents — Criminal penalties.

Any person who shall, except as permitted by law, willfully resist, prevent, impede, or interfere with the Director of the Arkansas Department of Environmental Quality or any of his or her authorized representatives in the performance of duties pursuant to this chapter shall be guilty of a misdemeanor and may be punished upon conviction by a criminal penalty of not more than five thousand dollars (\$5,000) or by imprisonment for not more than one (1) year, or by both.

History. Acts 1979, No. 134, § 19; 1979, No. 647, § 5; 1981, No. 328, § 1; A.S.A. 1947, § 52-953.

15-58-306. False statement, representation, or certification — Criminal penalties.

A person who knowingly makes a false statement, representation, or certification or who knowingly fails to make a statement, representation, or certification in an application, record, report, plan, or other document filed or required to be maintained under this chapter shall be guilty of a misdemeanor and upon conviction may be punished by a criminal penalty of not more than ten thousand dollars (\$10,000) or by imprisonment for not more than one (1) year, or by both.

History. Acts 1979, No. 134, § 21; A.S.A. 1947, § 52-955.

15-58-307. Civil penalties generally.

(a) Any person who violates any permit condition or who violates any other provision of this chapter or the regulations issued pursuant to this chapter may in accordance with the regulations issued by the Arkansas Pollution Control and Ecology Commission be assessed a civil penalty by the commission, except that if such violation leads to the

issuance of a cessation order, the civil penalty shall be assessed. The penalty shall not exceed five thousand dollars (\$5,000) for each violation and shall be based on a schedule which the commission shall issue by regulation. Each day of continuing violation may be deemed a separate violation for purposes of penalty assessments.

(b) In determining the amount of any penalty to be assessed, consideration shall be given:

(1) To the person's history of previous violations at the particular surface coal mining operation;

(2) To the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public;

(3) To whether the person was negligent; and

(4) To the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of the violation.

(c) Any operator who fails to complete the corrective measures designated in a notice of violation or a cessation order within the period designated for correction, which period shall not end until the entry of a final order by the commission if administrative review proceedings are initiated, and the presiding officer orders, after an expedited hearing, the suspension of the abatement requirements of the citation after determining that the operator will suffer irreparable loss or damage from the application of those requirements, or until the entry of a final order of the circuit court, in the case of any judicial review proceedings wherein the court orders suspension of the abatement requirements of the citation, shall, in accordance with regulations issued by the commission, be assessed a civil penalty of not less than seven hundred fifty dollars (\$750) for each day during which such failure continues.

(d) No civil penalties may be assessed until the person charged with the violation has been given the opportunity for a public hearing pursuant to §§ 15-58-209 — 15-58-211. All civil penalties shall be deposited into the Surface Coal Mining Operation Fund established in § 15-58-508 and shall be used only for the purposes designated for surface coal mining operation funds in §§ 15-58-502 — 15-58-508.

History. Acts 1979, No. 134, § 18;
1979, No. 647, § 4; A.S.A. 1947, § 52-952.

15-58-308. Civil actions — Injunctions, etc.

(a) The Arkansas Pollution Control and Ecology Commission or the Director of the Arkansas Department of Environmental Quality may request the Attorney General or an attorney designated by the director to institute without bond or other undertaking a civil action for relief against a permittee or any person engaging in surface coal mining operations without a permit, including an injunction, restraining order, or any other appropriate order in the county in which any part of the surface coal mining and reclamation operation involved is located, or in

the county in which the permittee has his or her principal office. No liability whatsoever shall accrue to the commission, the director, or their authorized representatives on taking any actions pursuant to this section.

(b) The civil action may be instituted whenever the person or his or her agent:

(1) Violates or fails or refuses to comply with any order or decision issued by the director or his or her authorized representative under this chapter or under the regulations issued pursuant to this chapter;

(2) Interferes with, hinders, or delays the director or his or her authorized representatives in carrying out the provisions of this chapter or the regulations issued pursuant to this chapter;

(3) Refuses to permit inspection of the mine by the authorized representative;

(4) Refuses to furnish any information or report requested by the director in furtherance of the provisions of this chapter or the regulations issued pursuant to this chapter; or

(5) Refuses to permit access to, and copying of, records the director determines necessary to carry out the provisions of this chapter or the regulations issued pursuant to this chapter.

History. Acts 1979, No. 134, § 25;
1979, No. 647, § 8; A.S.A. 1947, § 52-959.

15-58-309. Right of private action.

(a) Any person having an interest which is or may be adversely affected may commence a civil action on his or her own behalf to compel compliance with this chapter or the regulations issued pursuant to this chapter:

(1) Against the State of Arkansas or any other state instrumentality or agency which is alleged to be in violation of the provisions of this chapter or of any rule, regulation, order, or permit issued pursuant thereto, or against any other person who is alleged to be in violation of any rule, regulation, order, or permit issued pursuant to this chapter; or

(2) Against the Director of the Arkansas Department of Environmental Quality or the Arkansas Pollution Control and Ecology Commission where there is alleged a failure of the director or the commission to perform any act or duty under this chapter which is not discretionary with the director or with the commission.

(b) No action may be commenced:

(1) Under subdivision (a)(1) of this section:

(A) Prior to sixty (60) days after the plaintiff has given notice in writing of the violation:

(i) To the director;

(ii) To the Attorney General; and

(iii) To any alleged violator; or

(B) If the director has commenced and is diligently prosecuting a civil action to require compliance with the provisions of this chapter,

or any rule, regulation, order, or permit issued pursuant to this chapter, but in any such action any person may intervene as a matter of right; or

(2) Under subdivision (a)(2) of this section prior to sixty (60) days after the plaintiff has given notice in writing of the action to the director in such manner as the commission shall by regulation prescribe, or to the commission, except that the action may be brought immediately after notification in the case where the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

(c)(1) Any action respecting a violation of this chapter or the regulations thereunder may be brought only in the Pulaski County Circuit Court if the action is filed against the State of Arkansas, the commission, the director, or any other state instrumentality or agency, and in Pulaski County or in the county in which the greater part of the surface coal mining operation complained of is located if the action is filed against any other person.

(2) In any action under this section, the director, the commission, or the Arkansas Department of Environmental Quality, if not a party, may intervene as a matter of right.

(d) The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation, including attorney and expert witness fees, to any party whenever the court determines the award is appropriate. If a temporary restraining order or preliminary injunction is sought, the court may require the filing of a bond or equivalent security, provided that no bond shall be required if the temporary restraining order or preliminary injunction is sought by the director, the commission, or the department.

(e) Nothing in this section shall restrict any right which any person or class of persons may have under any statute or common law to seek enforcement of any of the provisions of this chapter and the regulations thereunder or to seek any other relief, including relief against the director, the commission, or the department.

(f) Any person who is injured in his or her person or property through the violation by any operation of any rule, regulation, order, or permit issued pursuant to this chapter may bring an action for damages, including reasonable attorney and expert witness fees only in the judicial district in which the surface coal mining operation complained of is located. Nothing in this subsection shall affect the rights established by or limits imposed under the Workers' Compensation Law, § 11-9-101 et seq.

History. Acts 1979, No. 134, § 32; A.S.A. 1947, § 52-966; Acts 1999, No. 1164, § 148.

A.C.R.C. Notes. Acts 1997, No. 1219, § 2, provided: "Arkansas Department of Pollution Control & Ecology' renamed to 'Arkansas Department of Environmental

Quality'.

"(a) Effective March 31, 1999, the 'Arkansas Department of Pollution Control & Ecology' or 'Department,' as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the 'Arkansas Department of Envi-

ronmental Quality' is hereby established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial in-

struments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

"(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change."

SUBCHAPTER 4 — STATE ABANDONED MINE RECLAMATION PROGRAM

SECTION.

- 15-58-401. Lands eligible.
- 15-58-402. State priorities.
- 15-58-403. Costs of projects.
- 15-58-404. Abatement of adverse effects — Lien.

SECTION.

- 15-58-405. Right of entry.
- 15-58-406. Condemnation.
- 15-58-407. Use of acquired lands — Public hearing.

Effective Dates. Acts 1995, No. 500, § 9: Mar. 1, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the development of a small operator assistance program which conforms to the requirements of Public Law 95-87 is immediately necessary to the

development, administration and enforcement of surface coal mining and reclamation program. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

15-58-401. Lands eligible.

(a) Lands and water eligible for reclamation or drainage abatement expenditures under this chapter are those which were mined for coal or which were affected by the mining, wastebanks, coal processing, or other coal mining processes and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under federal or other state laws.

(b) Notwithstanding subsection (a) of this section, lands and water similarly affected by coal mining or other mining processes and abandoned or left in an inadequate reclamation status after August 3, 1977, are also eligible for reclamation or drainage abatement expenditures under this chapter if the Director of the Arkansas Department of Environmental Quality makes either of the following findings:

(1) A finding that the surface coal mining operation occurred during the period beginning on August 4, 1977, and ending on or before November 21, 1980, and that any funds for reclamation or abatement which are available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site; or

(2) A finding that the surface coal mining operation occurred during the period beginning on August 4, 1977, and ending on or before

November 5, 1990, and the surety of the mining operator became insolvent during the period, and, as of March 1, 1995, funds immediately available from proceedings relating to that insolvency or from any financial guarantee or other source are not sufficient to provide for adequate reclamation or abatement at the site.

(c)(1) In determining which sites to reclaim pursuant to subsection (b) of this section, the director shall follow the priorities stated in § 15-58-402(1) and (2).

(2) The director shall ensure that priority is given to those sites which are in the immediate vicinity of a residential area or which have an adverse economic impact upon a community.

History. Acts 1979, No. 134, § 6; A.S.A. 1947, § 52-940; Acts 1993, No. 209, § 1; 1993, No. 371, § 1; 1995, No. 500, § 5.

term "date of enactment of this section," Acts 1993, No. 371, was signed by the Governor on March 5, 1993 and became effective on August 13, 1993.

Publisher's Notes. In reference to the

15-58-402. State priorities.

Expenditure of moneys from the fund on lands and water eligible pursuant to § 15-58-401 for the purposes of this chapter shall reflect the following priorities in the order stated:

(1) The protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices;

(2) The protection of public health, safety, and general welfare from adverse effects of coal mining practices;

(3) The restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices, including measures for the conservation and development of soil, water excluding channelization, woodland, fish and wildlife, recreation resources, and agricultural productivity;

(4) Research and demonstration projects relating to the development of surface mining reclamation and water quality control program methods and techniques;

(5) The protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, recreation, and conservation facilities adversely affected by coal mining practices; and

(6) The development of publicly owned land adversely affected by coal mining practices, including land acquired as provided in this title for recreation and historic purposes, conservation and reclamation purposes, and open space benefits.

History. Acts 1979, No. 134, § 7; A.S.A. 1947, § 52-941.

15-58-403. Costs of projects.

The costs for each proposed project under the abandoned mine reclamation program shall include:

- (1) Actual construction costs;
- (2) Actual operation and maintenance costs of permanent facilities;
- (3) Planning and engineering costs;
- (4) Construction inspection costs; and
- (5) Other necessary administrative expenses.

History. Acts 1979, No. 134, § 8; A.S.A. 1947, § 52-942.

15-58-404. Abatement of adverse effects — Lien.

(a) If the Director of the Arkansas Department of Environmental Quality or his or her authorized representative, pursuant to the state abandoned mine reclamation program, makes a finding of fact that:

(1) Land or water resources have been adversely affected by past coal mining practices; and

(2) The adverse effects are at a state where, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and

(3)(A) The owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices are not known, or readily available; or

(B) The owners will not give permission for the state or political subdivisions of the state, or their agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices;

then, upon giving notice by mail to the owners, if known, or if not known, by posting notice upon the premises and advertising once in a newspaper of general circulation in the county in which the land lies, the director or his or her authorized representative shall have the right to enter upon the property adversely affected by past coal mining practice and any other property to have access to the property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent adverse effects. The entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property nor of trespass thereon. The moneys expended for the work and the benefits accruing to any premises so entered upon shall be chargeable against the land and shall mitigate or offset any claim in or any action brought by any owner of any interest in the premises for any alleged damages by virtue of the entry. However, this provision is not intended to create new rights of action or eliminate existing immunities.

(b) There shall exist a lien against the property so reclaimed if the moneys expended for reclamation shall result in a significant increase

in property value. The lien shall be effective upon the filing by the director of a notice of lien with the circuit clerk of the county in which the land is located, and in accordance with the regulations issued by the Arkansas Pollution Control and Ecology Commission, but the notice shall constitute a lien upon the land as of the date of the expenditure of the moneys and shall have priority as a lien second only to the lien of real estate taxes imposed upon the land.

(c) The lien obtained pursuant to this section shall not exceed the amount determined by an independent appraisal to be the increase in the market value of the land as a result of the reclamation undertaken. The commission by regulations shall establish procedures for determining the amount of the lien. The landowner or any parties aggrieved by the decision determining the amount of the lien may request an adjudicatory hearing before the commission pursuant to §§ 15-58-209 — 15-58-211.

(d) No lien shall be filed against the property of any person, in accordance with this subsection, who owned the surface prior to May 2, 1977, and who neither consented to, participated in, nor exercised control over the mining operation which necessitated the reclamation performed hereunder.

History. Acts 1979, No. 134, § 9; A.S.A. 1947, § 52-943.

15-58-405. Right of entry.

(a) The Director of the Arkansas Department of Environmental Quality or his or her authorized representative pursuant to an approved state abandoned mine reclamation program shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of the adverse effects.

(b) The entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property or trespass thereon.

History. Acts 1979, No. 134, § 10; A.S.A. 1947, § 52-944.

15-58-406. Condemnation.

(a) The Director of the Arkansas Department of Environmental Quality, personally or through his or her authorized legal representative, pursuant to an approved state abandoned mine reclamation program, may acquire for the state any land, by purchase, donation, or condemnation, which is adversely affected by past coal mining practices if the director determines that acquisition of such land is necessary to successful reclamation and that:

(1)(A) The acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will serve recreation and historic purposes, conservation and reclamation purposes, or provide open-space benefits; and

(B) Permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices; or

(2) Acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of this chapter, or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices.

(b) Title to all lands acquired pursuant to this section shall be in the name of the state.

(c) The price paid for land acquired under this section shall reflect the market value of the land as adversely affected by past coal mining practices.

History. Acts 1979, No. 134, § 11;
A.S.A. 1947, § 52-945.

15-58-407. Use of acquired lands — Public hearing.

(a) The Arkansas Pollution Control and Ecology Commission, pursuant to an approved state abandoned mine reclamation program, when requested after appropriate public notice, shall hold a public hearing in accordance with §§ 15-58-207 and 15-58-208 in the county or counties in which lands acquired pursuant to this subchapter are located.

(b) The hearing shall be held in accordance with procedures established by the commission through regulations and at a time which shall afford local citizens and governments the maximum opportunity to participate in the decision concerning the use or disposition of the lands after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

History. Acts 1979, No. 134, § 12;
A.S.A. 1947, § 52-946.

SUBCHAPTER 5 — SURFACE COAL MINING REGULATION

SECTION.

- 15-58-501. Designation of land as unsuitable.
- 15-58-502. Necessity of permit — Application.
- 15-58-503. Regulations generally.
- 15-58-504. Exploration operations.
- 15-58-505. Filing objections to permits.

SECTION.

- 15-58-506. Permit renewal.
- 15-58-507. Termination of permit.
- 15-58-508. Fees — Surface Coal Mining Operation Fund.
- 15-58-509. Performance bonds.
- 15-58-510. Environmental protection performance standards.

Effective Dates. Acts 1993, No. 737, § 6: Mar. 26, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the amendment of the definition of "small operator" as defined in this act is essential in protecting the health and well being of the public. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 500, § 9: Mar. 1, 1995. Emergency clause provided: "It is hereby

found and determined by the General Assembly of the State of Arkansas that the development of a small operator assistance program which conforms to the requirements of Public Law 95-87 is immediately necessary to the development, administration and enforcement of surface coal mining and reclamation program. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

15-58-501. Designation of land as unsuitable.

(a) The Arkansas Pollution Control and Ecology Commission shall issue regulations that adopt appropriate procedures for identifying and designating land in this state as unsuitable for all or certain types of surface mining, which regulations shall:

(1) Prevent surface coal mining operations on those lands upon which surface coal mining operations are prohibited by Public Law 95-87;

(2) Adopt a procedure for development of a database and inventory system which will permit proper evaluation of the capacity of different land areas of this state to support and permit reclamation of surface coal mining operations and which includes methods for integrating and implementing federal, state, and local land use planning decisions;

(3) Integrate into the procedure as closely as possible present and future land use planning and regulation processes at the federal, state, and local levels; and

(4) Provide that any person having an interest which is or may be adversely affected may petition the commission to have an area designated as unsuitable for all or certain types of surface coal mining operations or to have a designation terminated. Within ten (10) months after the filing of the petition, the commission shall hold a public hearing in accordance with §§ 15-58-207 and 15-58-208.

(b) Prior to designating any land areas as unsuitable for surface coal mining operations, the commission shall prepare a detailed statement on:

(1) The potential coal resources of the area;

(2) The demand for coal resources; and

(3) The impact of the designation on the environment, the economy, and the supply of coal.

(c)(1) Upon petition pursuant to subsection (a) of this section, the commission shall designate an area as unsuitable for all or certain types of surface coal mining operations if the commission determines

that reclamation pursuant to the requirements of this chapter is not technologically and economically feasible.

(2) Upon petition pursuant to subsection (a) of this section, a surface area may be designated unsuitable for certain types of surface coal mining operations if the operations will:

(A) Be incompatible with existing state or local land use plans or programs;

(B) Affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, and aesthetic values and natural systems;

(C) Affect renewable resource lands in which operations could result in a substantial loss or reduction of long range productivity of water supply or of food or fiber products, and the lands include aquifers and aquifer recharge areas; or

(D) Affect natural hazard lands in which operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

History. Acts 1979, No. 134, § 26; 1979, No. 647, § 9; A.S.A. 1947, § 52-960.

Publisher's Notes. Acts 1979, No. 647, § 9, provided that the regulations issued pursuant to this section were not to apply to lands on which surface coal mining operations were conducted as of August 3,

1977, or when substantial legal and financial commitments in those operations were in existence prior to January 4, 1977.

U.S. Code. Public Law 95-87, referred to in this section, is codified as 18 U.S.C. § 1114 and 30 U.S.C. § 1201 et seq.

15-58-502. Necessity of permit — Application.

(a) Any person in expectation of conducting surface coal mining and reclamation operations in this state must apply for a permit.

(b) No person shall engage in or carry out on lands within the state any surface coal mining operations unless that person has first obtained a permit issued by the Director of the Arkansas Department of Environmental Quality pursuant to this chapter and in accordance with the regulations issued pursuant to this chapter.

(c) Any person conducting surface coal mining and reclamation operations in this state in compliance with a valid permit and who has filed a permit application may continue to conduct operations until the director approves or denies his or her application.

History. Acts 1979, No. 134, § 13; 1979, No. 647, § 2; A.S.A. 1947, § 52-947.

15-58-503. Regulations generally.

(a)(1) The Arkansas Pollution Control and Ecology Commission shall issue regulations as are required pursuant to the state program requirements of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, designating the required information, the criteria, and the procedures for submitting, processing, and issuing or

denying initial or revised applications for permits and renewals thereof to conduct surface coal mining and reclamation operations in this state.

(2) The regulations shall require inclusion of all the documents, permits, notices, maps, reports, schedules, test results, reclamation and blasting plans, bonds, insurance certificates, and other information as is reasonably necessary to process the application, to ensure compliance with the provisions of this chapter and the regulations issued pursuant to this chapter and to meet the state program requirements.

(3)(A) The regulations shall specifically provide that all applications shall include a determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity, and quality of water in surface and groundwater systems, including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding surface areas so that an assessment can be made by the Director of the Arkansas Department of Environmental Quality of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability. However, this determination shall not be required until hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency. The permit shall not be approved until the information is available and is incorporated into the application.

(B) The costs of the following activities, which shall be performed by a qualified public or private laboratory or other public or private qualified entity designated by the Arkansas Department of Environmental Quality shall be borne, upon written request of the small operator, by the department in accordance with regulations issued by the commission:

(i) The determination of the probable hydrologic consequences required by this subdivision (a)(2), including the engineering analysis and designs necessary for the determination;

(ii) The development of cross-sections, maps, and plans of land to be affected by an application for a surface coal mining and reclamation permit which shall be prepared by or under the direction of a qualified registered professional engineer or geologist with assistance from experts in related fields such as land surveying and landscape architecture, showing pertinent elevation and location of test borings or core samplings and depicting the following information:

(a) The nature and depth of the various strata of overburden;

(b) The location of subsurface water, if encountered, and its quality;

(c) The nature and thickness of any coal or rider seam above the coal seam to be mined;

(d) The nature of the stratum immediately below the coal seam to be mined;

(e) All mineral crop lines and the strike and dip of the coal to be mined, within the area of the land to be affected;

- (f) Existing or previous surface mining limits;
- (g) The location and extent of known workings of any underground mines, including mine openings to the surface;
- (h) The location of aquifers;
- (i) The estimated elevation of the water table;
- (j) The location of spoil, waste, or refuse areas and topsoil preservation areas;
- (k) The locations of all impoundments for waste or erosion control;
- (l) Any settling or water treatment facility;
- (m) Constructed or natural drainways and the location of any discharges to any surface body of water on the area of land to be affected or adjacent thereto; and

(n) Profiles at appropriate cross-sections of the anticipated final surface configuration that will be achieved pursuant to the operator's proposed reclamation plan;

(iii) The geologic drilling and a statement of the result of the test borings or core samplings from the permit area, including:

- (a) Logs of the drill holes;
- (b) The thickness of the coal seam found, and an analysis of the chemical properties of the coal;
- (c) The sulfur content of any coal seam;
- (d) Chemical analysis of potentially acid or toxic-forming sections of the overburden; and
- (e) Chemical analysis of the stratum lying immediately underneath the coal to be mined,

except that the provisions of this subdivision (a)(2)(B)(iii) may be waived by the director with respect to the specific application by a written determination that such requirements are unnecessary;

(iv) The collection of archeological information and any other historical information sufficient to prepare accurate maps to an appropriate scale clearly showing all man-made features and significant known archeological sites existing on the date of application, and the preparation of plans necessitated thereby;

(v) Preblast surveys, as requested by a resident or owner of a man-made dwelling or structure within one-half (½) mile of any portion of the permitted area. The applicant or permittee shall conduct the preblast survey of such structures and submit the survey to the director and a copy to the resident or owner making the request;

(vi) The collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values required by the director under this chapter; and

(vii) The department shall provide or assume the cost of training small operators concerning the preparation of permit applications and compliance with the regulatory program and shall ensure that small operators are aware of the assistance available under this subdivision (a)(2).

(C) A coal operator that has received assistance pursuant to this subdivision (a)(2) shall reimburse the department for the cost of the services rendered if the director finds that the operator's actual and attributed annual production of coal for all locations exceeds three hundred thousand (300,000) tons during the twelve (12) months immediately following the date on which the operator is issued the surface coal mining and reclamation permit.

(4) The regulations shall provide that no initial or revised permit will be approved unless the application affirmatively demonstrates and the director finds in writing on the basis of the information set forth in the application or from information otherwise available which will be documented in the approval and made available to the applicants, that:

(A) The permit application is accurate and complete and that all the requirements of this chapter and the regulations issued pursuant to this chapter have been complied with;

(B) The applicant has demonstrated that reclamation as required by this chapter and the regulations issued pursuant to this chapter can be accomplished under the reclamation plan contained in the permit application;

(C) The assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance specified in subdivision (a)(2) of this section has been made by the director and the proposed operation thereof has been designed to prevent material damage to the hydrologic balance outside the permit area;

(D) The area proposed to be mined is not included within an area designated unsuitable for surface coal mining pursuant to § 15-58-501 or is not within an area under study for the designation in an administrative proceeding commenced pursuant to §§ 15-58-207 and 15-58-208;

(E) Any violation of this chapter or the regulations issued pursuant to this chapter or any law, rule, or regulation of this state, the United States, or agencies of this state or the United States pertaining to air or water environmental protection incurred by the applicant in connection with any surface coal mining operation during the three-year period prior to the date of application has been corrected or is in the process of being corrected to the satisfaction of the director, department, or agency which has jurisdiction over the violation. No permit shall be issued to an applicant after a finding by the director after opportunity for hearing that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of this chapter or the regulations issued pursuant to this chapter of a nature and duration with resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of this chapter or the regulations issued pursuant to this chapter;

(F) If the area proposed to be mined contains prime farmland, the operator has the technological capability to restore the mined area, within a reasonable time to equivalent or higher levels of yield as

nonmined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards established by the commission by regulation;

(G) After March 1, 1995, the prohibition of subdivision (a)(3)(E) of this section shall not apply to a permit application due to any violation resulting from an unanticipated event or condition at a surface coal mining operation on lands eligible for remining under a permit held by the person making the application. As used in this subdivision (a)(3)(G), the term "violation" has the same meaning as the term has under subdivision (a)(3)(E) of this section.

(5) The regulations shall provide that all permits shall be issued for a term not to exceed five (5) years unless the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and the opening of operation.

(6) The regulations shall provide that any extensions to the area covered by the permit except incidental boundary revisions must be made by application for another permit.

(7) The regulations shall provide that no transfer, assignment, or sale of the rights granted under any permit issued under this chapter shall be made without the written approval of the director. However, the commission may issue regulations providing for a review of outstanding permits, and the director may, in accordance with the regulations, and based upon written findings after notice and public hearing, require reasonable revisions or modifications of the permit during the term of the permit.

(b) The commission shall develop by regulation procedures for coordinating the issuance of permits required by federal, state, and local agencies for surface coal mining operations.

(c) The commission shall issue regulations to protect confidential information which is submitted to the department as part of a permit application or pursuant to the coal exploration requirements.

History. Acts 1979, No. 134, § 13; 1979, No. 647, § 2; A.S.A. 1947, § 52-947; Acts 1993, No. 737, § 2; 1995, No. 500, §§ 3, 4; 1999, No. 1164, § 149.

A.C.R.C. Notes. As amended by Acts 1995, No. 500, subdivision (a)(3)(G) ended: "The authority of this subdivision and § 15-58-510(e) shall terminate on September 30, 2004."

Acts 1997, No. 1219, § 2, provided: "Arkansas Department of Pollution Control & Ecology" renamed to 'Arkansas Department of Environmental Quality'.

"(a) Effective March 31, 1999, the 'Arkansas Department of Pollution Control & Ecology' or 'Department,' as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its

place, the 'Arkansas Department of Environmental Quality' is hereby established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

"(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change."

U.S. Code. Public Law 95-87, the Sur-

face Mining Control and Reclamation Act primarily codified as 30 U.S.C. § 1201 et seq. of 1977, referred to in this section, is

15-58-504. Exploration operations.

(a) Coal exploration operations which substantially disturb the natural land surface shall be conducted in accordance with coal exploration regulations issued by the Arkansas Pollution Control and Ecology Commission.

(b) Coal exploration regulations shall provide, at a minimum, that prior to conducting any exploration under this subchapter, any person must file with the Arkansas Department of Environmental Quality notice of intention to explore, and that no operator shall remove more than two hundred fifty (250) tons of coal pursuant to an exploration permit without the specific written approval of the department.

(c) Coal exploration operations which substantially disturb the natural land surface in violation of this chapter or in violation of the regulations issued pursuant to this chapter shall be subject to the civil and criminal penalties and enforcement provisions of this chapter.

History. Acts 1979, No. 134, § 13; 1979, No. 647, § 2; A.S.A. 1947, § 52-947; Acts 1999, No. 1164, § 150.

A.C.R.C. Notes. Acts 1997, No. 1219, § 2, provided: “‘Arkansas Department of Pollution Control & Ecology’ renamed to ‘Arkansas Department of Environmental Quality’.

“(a) Effective March 31, 1999, the ‘Arkansas Department of Pollution Control & Ecology’ or ‘Department,’ as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the ‘Arkansas Department of Environmental Quality’ is hereby established,

succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

“(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change.”

15-58-505. Filing objections to permits.

Any person having an interest which is or may be adversely affected, or the officer or head of any federal, state, or local affected governmental agency may, in accordance with §§ 15-58-207 and 15-58-208 and the regulations promulgated by the Arkansas Pollution Control and Ecology Commission, file written objections to a proposed initial or revised permit for surface coal mining and reclamation operations, or renewal thereof.

History. Acts 1979, No. 134, § 13; 1979, No. 647, § 2; A.S.A. 1947, § 52-947.

15-58-506. Permit renewal.

(a) Any valid permit issued pursuant to this chapter shall carry with it the right to successive renewal upon expiration with respect to areas within the boundaries of the existing permit. The holders of the permit may apply for renewal, and renewal shall be issued unless the opponents of renewal have established, and the commission finds in writing, that:

(1) The terms and conditions of the existing permit are not being satisfactorily met;

(2) The present surface coal mining and reclamation operation is not in compliance with the environmental protection standards of this chapter and the regulations issued pursuant to this chapter;

(3) The renewal requested substantially jeopardizes the operator's continuing responsibility on existing permit areas;

(4) The operator has not provided evidence that the performance bond in effect for the operation will continue in full force and effect for any renewal requested in such application as well as any additional bond the regulatory authority might require pursuant to § 15-58-509; or

(5) Any additional revised or updated information required by the regulatory authority has not been provided. Prior to the approval of any renewal of permit, the commission shall provide notice to the appropriate public authorities.

(b) If an application for renewal of a valid permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application for renewal of a valid permit which addresses any new land areas shall be subject to the full standards applicable to new applications under this chapter.

(c) Any permit renewal shall be for a term not to exceed the period of the original permit established by this chapter. Application for the permit renewal shall be made at least one hundred twenty (120) days prior to the expiration of the valid permit.

History. Acts 1979, No. 134, § 13; 1979, No. 647, § 2; A.S.A. 1947, § 52-947.

15-58-507. Termination of permit.

(a) A permit shall terminate if the permittee has not commenced the surface coal mining operations covered by the permit within three (3) years of the issuance of the permit.

(b)(1) The director may grant reasonable extensions of time upon a showing that extensions are necessary by reason of litigation precluding such commencement or threatening substantial economic loss to the permittee, or by reason of conditions beyond the control and without the fault or negligence of the permittee.

(2) With respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the person shall be deemed

to have commenced surface mining operations when the construction of the synthetic fuel or generating facility is initiated.

History. Acts 1979, No. 134, § 13; 1979, No. 647, § 2; A.S.A. 1947, § 52-947.

15-58-508. Fees — Surface Coal Mining Operation Fund.

(a) Each application for a surface coal mining permit or renewal of that permit shall be accompanied by an initial application fee as determined by the Director of the Arkansas Department of Environmental Quality in accordance with a fee schedule which the Arkansas Pollution Control and Ecology Commission shall develop and issue by regulations.

(b) The initial application fee shall be based as nearly as possible on the actual or anticipated cost of reviewing the application.

(c) After approval but before issuance of the surface coal mining permit or renewal permit, the applicant shall pay a final application fee which shall not exceed the actual or anticipated cost of administering and enforcing the permit. However, this final application fee may be paid in annual installments apportioned over the term of the permit.

(d) The Arkansas Department of Environmental Quality shall maintain a separate Surface Coal Mining Operation Fund for the fees which may only be used for the administration and enforcement of this chapter and as the state's matching percentage share for any grants available to the state for the administration and enforcement of the state program.

History. Acts 1979, No. 134, § 13; 1979, No. 647, § 2; A.S.A. 1947, § 52-947; Acts 1999, No. 1164, § 151.

A.C.R.C. Notes. Acts 1997, No. 1219, § 2, provided: "‘Arkansas Department of Pollution Control & Ecology’ renamed to ‘Arkansas Department of Environmental Quality’.

"(a) Effective March 31, 1999, the ‘Arkansas Department of Pollution Control & Ecology’ or ‘Department,’ as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the ‘Arkansas Department of Environmental Quality’ is hereby established,

succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

"(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change."

15-58-509. Performance bonds.

(a) After a surface coal mining and reclamation permit application has been approved but before the permit is issued, the applicant shall file a bond with the Arkansas Department of Environmental Quality. This bond shall be on a form furnished by the department in accordance with the regulations issued by the Arkansas Pollution Control and Ecology Commission. It shall be for performance or acceptable alterna-

tive payable, as appropriate, to the department of and conditioned upon faithful performance of all the requirements of this chapter, the regulations issued pursuant to this chapter, and the permit.

(b) All forfeitures collected under this chapter shall be deposited into a separate Mining Reclamation Trust Fund which shall be maintained by the department. The fund may only be used to accomplish reclamation of land covered by forfeitures of performance bonds.

(c) The regulations shall include provisions for posting a bond sufficient to cover that area of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit and for filing additional bonds to cover succeeding increments of area within the permit upon which the operator intends to conduct surface coal mining and reclamation operations.

(d) Liability under the bond shall be for the duration of the surface coal mining and reclamation operation and for that period required to establish successful revegetation in accordance with the regulations issued by the commission.

(e) The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by the department in the event of forfeiture. In no case shall the bond for the entire area under one (1) permit be less than ten thousand dollars (\$10,000).

(f) The commission shall issue regulations setting out the criteria and procedures for processing requests for the release of all or any part of a performance bond provided that no bond shall be fully released until all reclamation requirements of this chapter and the regulations issued pursuant to this chapter are fully met. Regulations shall include provisions for public notice of all requests for full or partial releases, an inspection and evaluation of the reclamation work, and a schedule for partial releases.

(g) Any person having an interest which is or may be adversely affected, or the office or head of any federal, state, or local affected governmental agency may, in accordance with §§ 15-58-209 — 15-58-211, file written objections to the proposed release from bond and request an adjudicatory public hearing.

History. Acts 1979, No. 134, § 14; A.S.A. 1947, § 52-948; Acts 1999, No. 1164, §§ 152, 153.

A.C.R.C. Notes. Acts 1997, No. 1219, § 2, provided: “‘Arkansas Department of Pollution Control & Ecology’ renamed to ‘Arkansas Department of Environmental Quality’.

“(a) Effective March 31, 1999, the ‘Arkansas Department of Pollution Control & Ecology’ or ‘Department,’ as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the ‘Arkansas Department of Envi-

ronmental Quality’ is hereby established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

“(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of

Pollution Control and Ecology prior to the effective date of the name change.”

15-58-510. Environmental protection performance standards.

(a) Any permit issued pursuant to this chapter to conduct surface coal mining operations and any authorization to conduct coal exploration operations shall require that operations will meet all applicable performance standards of this chapter and the regulations issued pursuant to this chapter.

(b) The commission shall issue regulations which are consistent with and in accordance with, but no more restrictive than, all the applicable environmental protection performance standards found in Public Law 95-87 and in the regulations issued pursuant to Public Law 95-87.

(c) The commission shall issue regulations requiring the training, examination, and certification of persons engaging in or directly responsible for blasting or use of explosives in surface coal mining operations.

(d) All departures, variances, and exceptions from the performance standards which are provided in Public Law 95-87 and in the regulations issued pursuant to that chapter and other departures, variances, and exceptions which may be granted through a state program shall be provided for in the regulations issued by the commission pursuant to this chapter. The departures, variances, and exceptions provided for in Public Law 95-87 and in the regulations issued pursuant to that law shall be granted or allowed upon a showing of the same circumstances and conditions required in Public Law 95-87 or in the regulations issued pursuant to that law.

History. Acts 1979, No. 134, § 15; A.S.A. 1947, § 52-949.

A.C.R.C. Notes. Acts 1995, No. 500, § 4, provided, in part: “The authority of this subdivision [§ 15-58-303(a)(3)(G)]

and § 15-58-510(e) shall terminate on September 30, 2004.”

U.S. Code. As to Public Law 95-87, referred to in this section, see note to § 15-58-503.

CHAPTER 59

WEIGHING OF COAL AND MINERALS

SECTION.

15-59-101 — 15-59-115. [Repealed.]

Effective Dates. Acts 1893, No. 125, § 17: effective 90 days after passage.

Acts 1899, No. 102, § 4: effective 90 days after passage.

Acts 1905, No. 225, § 19: effective 20 days after passage.

Acts 1915, No. 49, § 2: Feb. 16, 1915. Emergency declared.

Acts 1941, No. 382, § 13: Mar. 26, 1941. Emergency clause provided: “It is hereby

found to be a fact that coal is being sold at coal mines without being actually weighed and that the weights of said coal are estimated, so that the State of Arkansas and its institutions are being deprived of severance and other taxes; workers are being underpaid; the natural resources of Arkansas are being depleted; the highways are being worn out and damaged by persons, firms and corporations who

transport coal over them to the great detriment of the state, the citizens, taxpayers and property owners of the state, and that same will continue unless prevented by the General Assembly of the State of Arkansas, and that it is imperative that same be brought to an end forth-

with; therefore, this act being necessary for the immediate preservation of the public peace, health and safety of the state, and the citizens thereof, same shall take effect and be in force from and after its passage and approval."

Acts 1949, No. 268, § 22: Mar. 10, 1949.

RESEARCH REFERENCES

Am. Jur. 54 Am. Jur. 2d, Mines, § 183.

15-59-101 — 15-59-115. [Repealed.]

Publisher's Notes. This chapter was repealed by Acts 2009, No. 380, § 1. The chapter was derived from the following sources:

15-59-101. Acts 1941, No. 382, § 10; A.S.A. 1947, § 52-715.

15-59-102. Acts 1941, No. 382, §§ 3, 12; A.S.A. 1947, §§ 52-708, 52-717.

15-59-103. Acts 1941, No. 382, § 3; A.S.A. 1947, § 52-708.

15-59-104. Acts 1941, No. 382, § 1; A.S.A. 1947, § 52-701.

15-59-105. Acts 1941, No. 382, § 2; A.S.A. 1947, § 52-707.

15-59-106. Acts 1941, No. 382, §§ 4, 11; 1949, No. 268, § 19; A.S.A. 1947, §§ 52-709, 52-716.

15-59-107. Acts 1941, No. 382, § 6; A.S.A. 1947, § 52-711.

15-59-108. Acts 1941, No. 382, § 5; A.S.A. 1947, § 52-710.

15-59-109. Acts 1941, No. 382, § 7; A.S.A. 1947, § 52-712.

15-59-110. Acts 1941, No. 382, § 8; A.S.A. 1947, § 52-713.

15-59-111. Acts 1893, No. 125, § 15, p. 213; C. & M. Dig., § 7272; Pope's Dig., § 9328; A.S.A. 1947, § 52-705.

15-59-112. Acts 1899, No. 102, §§ 1, 3, p. 165; 1905, No. 225, § 6, p. 567; C. & M. Dig., §§ 7273, 7275; Pope's Dig., §§ 9329, 9331; A.S.A. 1947, §§ 52-702, 52-703.

15-59-113. Acts 1905, No. 225, § 9, p. 567; C. & M. Dig., § 7274; Pope's Dig., § 9330; A.S.A. 1947, § 52-704.

15-59-114. Acts 1915, No. 49, § 1; C. & M. Dig., § 7276; Pope's Dig., § 9332; A.S.A. 1947, § 52-706.

15-59-115. Acts 1905, No. 225, §§ 13, 14, p. 567; C. & M. Dig., §§ 7282, 7283; Pope's Dig., §§ 9338, 9339; A.S.A. 1947, §§ 52-718, 52-719.

CHAPTER 60

MERCURY REFINERS

SECTION.

15-60-101. Chapter cumulative.

15-60-102. Penalty.

15-60-103. License required.

15-60-104. License application.

15-60-105. Contents of license.

15-60-106. License tax.

15-60-107. Receipt prerequisite to license issuance.

15-60-108. License issuance and expiration.

15-60-109. Record of license application and issuance.

SECTION.

15-60-110. Payment of clerk and sheriff.

15-60-111. Records to be kept by refiners and purchasers of ore.

15-60-112. Records to be kept by purchasers of refined mercury for resale.

15-60-113. Inspection and preservation of records.

15-60-114. Failure to preserve records or permit inspection — False statements in application.

15-60-115. Disposition of funds.

Effective Dates. Acts 1943, No. 86 § 19: approved Feb. 19, 1943. Emergency clause provided: "The fact that there is now no law regulating the business of milling, sampling, concentrating, reducing, refining, purchasing or receiving for sale ores, concentrates or amalgams bearing quicksilver or mercury; no law regulating the business of purchasing for resale distilled or refined quicksilver or

mercury; and the fact that 'high grading' has become so prevalent for lack of laws and for the fact that quicksilver and mercury cannot be traced and distinguished, an emergency is hereby declared, and this act being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in force from and after its passage."

15-60-101. Chapter cumulative.

This chapter is not intended to repeal any law now in force in this state except insofar as it is in direct conflict with the provisions hereof, but shall be cumulative thereto.

History. Acts 1943, No. 86, § 18; A.S.A. 1947, § 52-817.

15-60-102. Penalty.

Any violation of this chapter, or any part thereof, is a misdemeanor punishable by a fine of not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000) or by imprisonment in the county jail for not less than thirty (30) days nor more than six (6) months, or by both fine and imprisonment.

History. Acts 1943, No. 86, § 14; A.S.A. 1947, § 52-814.

15-60-103. License required.

It shall be unlawful for any person, association, partnership, copartnership, firm, joint-stock company, corporation, or trust to engage in the business of milling, sampling, concentrating, reducing, refining, purchasing, or receiving for sale ores, concentrates, or amalgams bearing quicksilver or mercury without first procuring the license provided for by this chapter.

History. Acts 1943, No. 86, § 1; A.S.A. 1947, § 52-801.

15-60-104. License application.

(a) The application for a license authorizing the carrying on of the businesses defined in § 15-60-106(a) and (b) shall be made to the county clerk of the county in which the business is to be conducted.

(b) The application shall be in writing and shall contain the full names and addresses of the applicants. In the case of associations, partnerships, copartnerships, and firms, it shall contain the full names

and addresses of the members thereof and in the case of joint-stock companies, corporations, and trusts, the full names and addresses of the officers and directors thereof, together with the places within the county where the business is to be conducted.

(c) The application shall be sworn to by the person making it.

History. Acts 1943, No. 86, § 4; A.S.A. 1947, § 52-804. mits, removal of disqualification for criminal offenses, § 17-1-103.

Cross References. Licenses and per-

15-60-105. Contents of license.

Every license issued by the county clerk shall:

(1) Contain the full name and address of the licensee. In the case of a group of persons participating together, associations, partnerships, copartnerships, and firms, it shall contain the full names and addresses of the members thereof and in the case of joint-stock companies, corporations, and trusts, the full names and addresses of the officers and directors thereof;

(2) State the date issued and the expiration date thereof; and

(3) State the county in which the license is valid and effective.

History. Acts 1943, No. 86, § 7; A.S.A. 1947, § 52-807.

15-60-106. License tax.

(a) Every person, group of persons, association, partnership, copartnership, firm, joint-stock company, corporation, or trust engaged in the business of milling, sampling, concentrating, reducing, refining, purchasing, or receiving for sale ores, concentrates, or amalgams bearing quicksilver or mercury shall pay a license tax of twenty-five dollars (\$25.00) a year to each county in which he, she, or it engages in business.

(b) Every person, group of persons, association, partnership, copartnership, firm, joint-stock company, corporation, or trust engaged in the business of purchasing for resale distilled or refined quicksilver or mercury shall pay a license tax of twenty-five dollars (\$25.00) a year to each county in which he, she, or it engages in business.

(c) The license tax provided for in this chapter is for the privilege of engaging in the businesses set out in the provisions of this chapter and entitles the licensee to a permit to carry on the business or occupation.

History. Acts 1943, No. 86, §§ 2, 3, 16; A.S.A. 1947, §§ 52-802, 52-803, 52-816.

15-60-107. Receipt prerequisite to license issuance.

Before any county clerk shall issue a license to any applicant therefor, there shall be exhibited to the clerk a receipt from the sheriff of the county as evidence that the license tax has been paid.

History. Acts 1943, No. 86, § 6; A.S.A. 1947, § 52-806.

15-60-108. License issuance and expiration.

Every license granted shall date from the first day of the month in which it is issued and expire on the following December 31.

History. Acts 1943, No. 86, § 5; A.S.A. 1947, § 52-805.

15-60-109. Record of license application and issuance.

It shall be the duty of the county clerk to record each application and each license issued in the mining records of the county.

History. Acts 1943, No. 86, § 8; A.S.A. 1947, § 52-808.

15-60-110. Payment of clerk and sheriff.

(a) The clerk shall be entitled to and receive from the county a fee of two dollars and fifty cents (\$2.50) for his or her services in receiving each application, issuing the license based thereon, and recording the application and license.

(b) The sheriff shall be entitled to and receive from the county five percent (5%) of each license fee collected.

History. Acts 1943, No. 86, § 9; A.S.A. 1947, § 52-809.

15-60-111. Records to be kept by refiners and purchasers of ore.

It shall be the duty of every person, group of persons, association, partnership, copartnership, firm, joint-stock company, corporation, or trust engaged in the business of milling, sampling, concentrating, reducing, refining, purchasing, or receiving for sale ores, concentrates, or amalgams bearing quicksilver or mercury, to keep a record containing the following information:

(1) The full name and address of the person from whom ores, concentrates, or amalgams bearing quicksilver or mercury were purchased;

(2) The name of the person, association, partnership, copartnership, firm, joint-stock company, corporation, or trust on whose behalf the ores, concentrates, or amalgams bearing quicksilver or mercury were delivered;

(3) The weight, amount, and a short description of each lot of ores, concentrates, or amalgams bearing quicksilver or mercury purchased;

(4) The date of delivery, the date of purchase, and the purchase price of each lot of ores, concentrates, or amalgams bearing quicksilver or mercury;

(5) The name and location of the mine or claim from which each purchased lot of ores, concentrates, or amalgams bearing quicksilver or mercury was mined or procured;

(6) The name and address of the purchaser on resale, in case of resale, of ores, concentrates, or amalgams bearing quicksilver or mercury;

(7) The date of delivery and the weight, amount, and a short description of each such lot of ores, concentrates, or amalgams bearing quicksilver or mercury resold, in case of a resale; and

(8) The date of delivery or shipment, the weight, the amount, the sale price received, and the name of the person, association, partnership, copartnership, firm, joint-stock company, corporation, or trust to whom any and all distilled or refined quicksilver or mercury was sold.

History. Acts 1943, No. 86, § 10; A.S.A. 1947, § 52-810.

15-60-112. Records to be kept by purchasers of refined mercury for resale.

It shall be the duty of every person, group of persons, association, partnership, copartnership, firm, joint-stock company, corporation, or trust engaged in the business of purchasing for resale distilled or refined quicksilver or mercury to keep a record containing the following information:

(1) The full name and address of the person from whom distilled or refined quicksilver or mercury was purchased;

(2) The name of the person, association, partnership, copartnership, firm, joint-stock company, corporation, or trust on whose behalf distilled or refined quicksilver or mercury was delivered;

(3) The weight, amount, date of delivery, date of purchase, purchase price, description of the container, and a short description of the metal, of the distilled or refined quicksilver or mercury purchased;

(4) The name and location of the mine or claim from which each purchased lot of distilled or refined quicksilver or mercury was mined or procured;

(5) The name and location of the mill, plant, retort, or other reduction apparatus from which distilled or refined quicksilver or mercury so purchased had been produced; and

(6) The name and address of the purchaser on resale, date of delivery or shipment, the weight, the amount, the sale price received, and a short description of the distilled or refined quicksilver or mercury.

History. Acts 1943, No. 86, § 11; A.S.A. 1947, § 52-811.

15-60-113. Inspection and preservation of records.

The records required to be kept by §§ 15-60-111 and 15-60-112 shall be open for inspection at all reasonable times by the sheriff, Department of Arkansas State Police, and prosecuting attorney. The records of each transaction must be kept for a period of at least three (3) years.

History. Acts 1943, No. 86, § 12; A.S.A. 1947, § 52-812.

15-60-114. Failure to preserve records or permit inspection — False statements in application.

Any licensee under this chapter shall forfeit his, her, or its licenses and be guilty of a misdemeanor if he, she, or it:

- (1) Fails, neglects, or refuses to keep and preserve the records provided for in this chapter;
- (2) Knowingly makes any false entries upon and within the records;
- (3) Causes any false or fictitious names upon and within the records;
- (4) Refuses to permit any authorized person to inspect the records or entries therein; or
- (5) Makes false statements concerning the application for license.

History. Acts 1943, No. 86, § 13; A.S.A. 1947, § 52-813.

15-60-115. Disposition of funds.

All license taxes collected, forfeited bail received, and fines collected under the provisions of this chapter shall be paid into the county general fund.

History. Acts 1943, No. 86, § 15; A.S.A. 1947, § 52-815.

CHAPTERS 61-69

[Reserved]

SUBTITLE 6. OIL, GAS, AND BRINE**CHAPTER 70****GENERAL PROVISIONS**

[Reserved]

CHAPTER 71**OIL AND GAS COMMISSION**

SECTION.

- 15-71-101. Creation.
- 15-71-102. Members.
- 15-71-103. Organization — Meetings.
- 15-71-104. Counsel for the commission.
- 15-71-105. Director of Production and Conservation.
- 15-71-106. Hearing officer.
- 15-71-107. Control or regulation of oil and gas production — Assessment on production — Use of money — Increase in assessment.
- 15-71-108. Purchaser to deduct and remit assessment to commission — Remission by producer.

SECTION.

- 15-71-109. Oil and Gas Commission Fund — Payment of commission vouchers.
- 15-71-110. Powers and duties — Rules and regulations.
- 15-71-111. Procedural rules, regulations, or orders — Hearing.
- 15-71-112. Subpoenas.
- 15-71-113. Authority to acquire and maintain unmarked cars.
- 15-71-114. Permit required for field seismic operations.
- 15-71-115. Abandoned and Orphaned Well Plugging Fund.
- 15-71-116. Annual fee assessment.

A.C.R.C. Notes. Acts 1989, No. 874, § 1, provided: “(a) There is hereby created a commission to study the proposal of requiring the Arkansas Oil and Gas Commission to provide to each county assessor, no later than January 1 and July 1 of each year, a record of natural gas production within the county for the previous six (6) months. The record shall indicate the well name, the legal description of the well location, and the name and mailing address of the operator of the well.

“(b) The membership of the commission shall be as follows:

“(1) One member shall be the Director of the Assessment Coordination Division;

“(2) One member shall be the Director of the Oil and Gas commission;

“(3) Three members shall be from the Oil and Gas Commission to be appointed by the Governor; and

“(4) Four members shall be county assessors from oil and/or gas producing counties to be appointed by the Governor, with two county assessors from northern Arkansas and two county assessors from southern Arkansas.

“(c) This commission shall terminate on December 31, 1991.”

Acts 2001, No. 1519, §§ 1 and 2, provided: “SECTION 1. (a) The Oil and Gas Commission shall conduct a study to address the issue of the level of noise resulting from the operation and maintenance of natural gas wells, pipelines, compressors, or any appurtenances to those

wells, pipelines, compressors, or from the distribution, transportation, gathering, processing, or storage of natural gas.

"(b) The commission shall hold at least six (6) public hearings at various locations and times throughout the state.

"(c) The study shall include, but not be limited to: (1) A review and study of past problems; (2) Investigation and documentation of current common practices in the operation of gas drilling and production equipment; (3) The review and study of other states as possible regulatory guidelines on noise standards; (4) A review of federal noise standards; (5) A review of the best available technology to minimize noise resulting from gas compression, and production equipment; (6) A study of the current practices involving the use of gas compression, and production equipment; (7) A review of the density of wells and compressors, the parameters and location of pipelines, and service features in areas where residents complain of noise generated by gas compression, or production equipment.

"(d) During the study the commission shall consider:

"(1) Information published by the Administrator of the United States Environmental Protection Agency on the levels of environmental noise that must be attained and maintained in defined areas under various conditions to protect public health and welfare with an adequate margin of safety;

"(2) Scientific information about the volume, frequency, duration, and other characteristics of noise that may create a nuisance or harm public health, safety, or general welfare, including: (A) Temporary or permanent hearing loss; (B) Interference with sleep, speech communication, work, or other human activities; (C) Adverse physiological responses; (D) Psychological distress; (E) Harm to animal life; (F) Devaluation of or damage to property; and (G) Unreasonable interference with the enjoyment of life or property;

"(3) The residential, commercial, or industrial nature of the area affected;

"(4) Zoning;

"(5) The nature and source of various kinds of noise;

"(6) The degree of noise reduction that may be attained and maintained using the best available technology;

"(7) Accepted scientific and professional methods for measurement of sound levels; and

"(8) The cost of compliance with the sound level limits.

"SECTION 2. The Oil and Gas Commission shall report to the House and Senate Interim Committees on City, County, and Local Affairs within thirty (30) days after every third public hearing required by this act."

Publisher's Notes. Acts 1971, No. 38, § 16, transferred the functions, powers, and duties of the Oil and Gas Commission to the Department of Commerce. However, Acts 1983, No. 691, abolished the Department of Commerce, and § 10 of that act provided that the Oil and Gas Commission should function as an independent agency in the same manner as it had functioned prior to the transfer.

Meaning of "this act". Acts 1939, No. 105, codified as §§ 15-71-101 — 15-71-112, 15-72-101 — 15-72-110, 15-72-205, 15-72-212, 15-72-216, 15-72-301 — 15-72-324, 15-72-401 — 15-72-407.

Cross References. Subordination of claims against operator, § 15-72-214.

Supervisory control of measurement of crude petroleum oil, § 15-74-201 et seq.

Effective Dates. Acts 1939, No. 105, § 29: approved Feb. 20, 1939. Emergency clause provided: "It is hereby declared that existing laws determining the authority of the state and the Arkansas Board of Conservation to conserve the oil and gas resources of the state, do not sufficiently define such authority, and such condition has greatly handicapped the Arkansas Board of Conservation in the proper administration of its duties; therefore, an emergency is hereby declared to exist, and it being necessary for the immediate preservation of the public peace, health, and safety, this act shall take effect and be in full force from and after its passage."

Acts 1975, No. 166, § 2: approved Feb. 12, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that the best interests of the State of Arkansas can be served by the enactment of this legislation, and this act being necessary for the continued operation of Oil and Gas Commission should be immediately effective. An emergency is hereby declared and this act shall be in full force from and after its passage."

Acts 1979, No. 113, § 6: Feb. 13, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that existing laws determining the authority of the Oil and Gas Commission, do not sufficiently define such authority; therefore, an emergency is hereby declared to exist, and it being necessary for the immediate preservation of the public peace, health and safety, this Act shall take effect and be in full force from and after its passage and approval."

Acts 1981, No. 319, § 10: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the Seventy-Third General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1981 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1981 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1981."

Acts 1981, No. 911, § 2: Mar. 28, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the best interests of the State of Arkansas can be served by the enactment of this legislation, and this Act being necessary for the continued operation of the Oil and Gas Commission should be immediately effective. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 691, § 19: effective on close of business June 30, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the various boards, commissions, departments, agencies, and services transferred to the Department of Commerce under the provisions of Act 38 of 1971, as amended, could perform their duties more

efficiently as independent agencies; that the agencies and services consolidated within the Department of Commerce under Act 38 of 1971 are so diverse in their purposes and duties that it is difficult for the Administrator of said Department to exert leadership in the operation of such agencies and programs; and, that the abolishment of the Department of Commerce and its central services would result in financial savings which could be best used for the support and operation of other essential services of government, and that the immediate passage of this act is necessary to provide for the repeal of the Department of Commerce and for the transition of the various departments, agencies, boards, commissions, and programs and services within said Department to an independent status, as provided herein. Therefore, an emergency is hereby declared to exist and this act, being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect as follows: Section 15 of this act shall be effective from and after March 1, 1983, and the remaining provisions of this act shall be effective on the close of business June 30, 1983 and thereafter."

Acts 1985, No. 680, § 2: Mar. 27, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the best interest of the State and the efficient operation of the Oil and Gas Commission can be served by the appointment of two (2) additional members to the Commission. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987 (1st Ex. Sess.), No. 32, § 3: June 12, 1987. 1987 (1st Ex. Sess.), No. 53, § 3: June 26, 1987, per A.G. opinion 87-241. Emergency clauses provided: "It is hereby found and determined by the General Assembly that the present law pertaining to the number of votes necessary for the adoption or promulgation of rules, regulations and orders by the Oil and Gas Commission is unclear; that this Act clarifies that law; and that until this Act becomes effective confusion will exist regarding the number of votes necessary for the adoption or promulgation of rules,

regulations or orders by the Oil and Gas Commission. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 5, § 7: Jan. 28, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that seismic testing in the state is not adequately regulated, that this act is designed to correct this situation and that the best interest of the state of Arkansas can be served by the enactment of this legislation, and this act is necessary for preservation of the public peace, health, safety and welfare and should be immediately effective. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 252, § 14: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1991 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1991 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991."

Acts 1993, No. 342, § 5: Mar. 3, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the law relating to the procedure whereby a surface owner files a claim for damage resulting from the performance of seismic operations is in need of immediate clarification; that this act is designed to accomplish this purpose and should be given effect immediately. There-

fore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 1047, § 5: Apr. 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that confusion exists concerning the proper state agency to have jurisdiction over natural gas production facilities and that the confusion has subjected natural gas production companies to conflicting jurisdictions of the Oil and Gas Commission and the Arkansas Public Service Commission. Therefore, in order to promote the most efficient regulation of natural gas production facilities and remove any conflict as to jurisdiction, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

RESEARCH REFERENCES

Am. Jur. 38 Am. Jur. 2d, Gas & O.,
§ 148.

CASE NOTES

Cited: Clinton v. Clinton, 305 Ark. 585,
810 S.W.2d 923 (1991).

15-71-101. Creation.

There is created the Oil and Gas Commission, hereinafter in this act called the “commission”, to be appointed by the Governor.

History. Acts 1939, No. 105, § 2; 1979, No. 113, § 1; A.S.A. 1947, § 53-102.

Publisher’s Notes. Acts 1971, No. 38, § 16, transferred the functions, powers, and duties of the Oil and Gas Commission to the Department of Commerce. However, Acts 1983, No. 691, abolished the Department of Commerce, and § 10 of that act provided that the Oil and Gas

Commission should function as an independent agency in the same manner as it had functioned prior to the transfer.

Meaning of “this act”. Acts 1939, No. 105, codified as §§ 15-71-101 — 15-71-112, 15-72-101 — 15-72-110, 15-72-205, 15-72-212, 15-72-216, 15-72-301 — 15-72-324, 15-72-401 — 15-72-407.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Well, Now, Ain’t That Just Fugacious!: A Basic Primer on Arkansas Oil and Gas Law, 29 U. Ark. Little Rock L. Rev. 211.

CASE NOTES

Cited: Clinton v. Clinton, 305 Ark. 585,
810 S.W.2d 923 (1991).

15-71-102. Members.

(a) The Oil and Gas Commission shall consist of nine (9) members, each to be appointed for a term of six (6) years, and, in event of a vacancy, the Governor shall by appointment fill the unexpired term.

(b) All of the members of the commission shall be residents and citizens of the State of Arkansas and at least twenty-one (21) years of age, at least a majority of whom shall be experienced in the development, production, or transportation of oil or gas.

(c) Each member shall qualify by taking an oath of office and shall hold office until his or her successor is appointed and qualified.

(d) Each member may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1939, No. 105, § 2; 1979, 1947, §§ 53-102, 53-102.2; Acts 1997, No. 113, § 1; 1985, No. 680, § 1; A.S.A. 250, § 112; 2009, No. 389, § 1.

A.C.R.C. Notes. Acts 1939, No. 105, § 2, as amended, provided that the Oil and Gas Commission was to have seven members whose terms were arranged so that three terms expired every sixth year and two terms expired in the second and fourth of the five intervening years. A majority of these seven members were to be experienced in the development, production, and transportation of oil and gas.

Acts 1985, No. 680, § 1, added two members. One of the initial appointees to these positions was to be appointed for a term of four years and one for a term of six years; successor members were to be appointed for six-year terms.

Construing the two acts together, a majority of the seven membership positions established by Acts 1939, No. 680, § 1, as amended, shall be filled by persons who are experienced in the development, pro-

duction, and transportation of oil and gas. This restriction does not apply to the membership positions established by Acts 1985, No. 680, § 1.

Acts 2009, No. 389, § 2, provided: "If upon the effective date of this act, there are not a majority of the members of the Oil and Gas Commission who are experienced in the development, production, or transportation of oil or gas on the commission, the Governor shall, upon the next vacancy, appoint a person who is experienced in the development, production, or transportation of oil or gas until that number is reached."

Amendments. The 2009 amendment, in (b), substituted "twenty-one (21)" for "thirty (30)," "a majority" for "four (4)," and substituted "or" for "and" in two places.

15-71-103. Organization — Meetings.

(a) The Oil and Gas Commission shall elect from its number a chairman.

(b) The commission shall establish an office at the county seat of some county in Arkansas in which oil or gas is produced, which place shall be designated by resolution of the commission and at which the records of the commission shall be kept.

(c) The commission shall meet or hold hearings at times and places found by the commission to be necessary to carry out its duties.

(d)(1) A majority of the commission shall constitute a quorum, and a majority of those voting for and against the adoption or promulgation of any rule, regulation, or order shall be necessary for the adoption or promulgation of the rule, regulation, or order.

(2) However, in no event shall any rule, regulation, or order be adopted or promulgated without receiving at least five (5) affirmative votes.

History. Acts 1939, No. 105, §§ 2, 3; 1979, No. 113, § 1; A.S.A. 1947, §§ 53-102, 53-103; Acts 1987 (1st Ex. Sess.), No. 32, § 1; 1987 (1st Ex. Sess.), No. 53, § 1; 2009, No. 1175, § 1.

Publisher's Notes. Acts 1987 (1st Ex. Sess.), No. 53, was vetoed by the Governor. However, such veto was held invalid by the Attorney General (Opinion No. 87-

241) on the grounds that the veto occurred after the expiration of the twenty-day period allowed by Ark. Const., Art. 6, § 15. Accordingly, the act became law on June 26, 1987.

Amendments. The 2009 amendment subdivided (d), and substituted "five (5)" for "four (4)" in (d)(2).

15-71-104. Counsel for the commission.

(a)(1) The Oil and Gas Commission may employ an attorney to provide specialized professional services in matters requiring legal representation.

(2) However, any contract for legal representation shall be subject to approval by the Attorney General, who shall otherwise be attorney for the commission.

(b) Any member of the commission or the secretary thereof shall have power to administer oaths to any witness in any hearing, investigation, or proceeding contemplated by this act or by any other law of this state relating to the conservation of oil or gas.

History. Acts 1939, No. 105, § 4; A.S.A. § 15-71-101. **Meaning of “this act”.** See note to 1947, § 53-104; Acts 2001, No. 1189, § 1.

15-71-105. Director of Production and Conservation.

(a)(1) The Oil and Gas Commission may appoint one (1) Director of Production and Conservation.

(2) The appointment under subdivision (a)(1) of this section is with the approval of the Governor.

(3) The director serves at the pleasure of the Governor at the salary set by law.

(b) The commission may authorize the director to employ other assistants, petroleum and natural gas engineers, bookkeepers, auditors, gaugers, and stenographers and other employees as necessary to properly administer and enforce the provisions of this act.

(c) The director shall:

(1) Be the ex officio secretary of the commission;

(2) Keep all minutes and records of the commission;

(3) Collect and remit to the Treasurer of State all moneys collected by the commission;

(4) Be the executive officer and administrator for all oil and gas activities regulated by the commission;

(5) Initiate and settle a civil or an administrative action to compel compliance with:

(A) A law administered by the commission; or

(B) An order, rule, or regulation issued by the commission;

(6) Administer the day-to-day activities of the commission, including without limitation the commission's fiscal and personnel activities; and

(7) Perform any other duty or act required or authorized by law or the rules, regulations, or orders of the commission.

History. Acts 1939, No. 105, § 5; 1979, No. 113, § 2; 1983, No. 691, § 10; A.S.A. 1947, §§ 53-102.1, 53-105; Acts 2009, No. 1175, § 2.

A.C.R.C. Notes. The operation of subsection (d) of this section was suspended by adoption of a self-insured fidelity bond

program for state officers, officials, and employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. Subsection (d) of this section may again become effective upon cessation of coverage under that program. See § 21-2-703.

Amendments. The 2009 amendment

subdivided (a); substituted “authorize the director to employ” for “at its discretion appoint” in (b); inserted (c)(4) through (c)(7); deleted (d); and made related and minor stylistic changes.

Meaning of “this act”. See note to § 15-71-101.

15-71-106. Hearing officer.

(a) The Oil and Gas Commission may appoint one (1) hearing officer to preside at all public hearings of the commission.

(b) The hearing officer may administer oaths and conduct hearings in conformity with the laws of this state applicable to hearings and proceedings before the commission and the rules of the commission.

History. Acts 1939, No. 105, § 5; 1981, No. 911, § 1; A.S.A. 1947, § 53-105; Acts 1987, No. 154, § 1; 2009, No. 1175, § 3.

Meaning of “this act”. See note to § 15-71-101.

Amendments. The 2009 amendment rewrote and subdivided the section.

RESEARCH REFERENCES

Ark. L. Rev. Watkins, Open Meetings Under the Arkansas Freedom of Information Act, 38 Ark. L. Rev. 268.

15-71-107. Control or regulation of oil and gas production — Assessment on production — Use of money — Increase in assessment.

(a)(1) All common sources of supply of crude oil discovered after January 1, 1937, if so found necessary by the Oil and Gas Commission, shall have the production of oil therefrom controlled or regulated in accordance with the provisions of this act.

(2)(A)(i) The commission is authorized to assess from time to time against each barrel of oil produced and saved a charge not to exceed fifty (50) mills on each barrel.

(ii) The charge that may be assessed pursuant to this subsection shall apply to each barrel of oil produced and saved, including that from common sources of supply discovered prior to January 1, 1937.

(B) All moneys so collected shall be used solely to pay the expenses and other costs in connection with the administration of this law.

(b)(1) All common sources of supply of natural gas discovered after January 1, 1937, if so found necessary by the commission, shall have the production of gas therefrom controlled or regulated in accordance with the provisions of this act.

(2)(A)(i) The commission is authorized to assess from time to time against each one thousand cubic feet (1,000 cf) of gas produced and saved from a gas well a charge not to exceed ten (10) mills on each one thousand cubic feet (1,000 cf) of gas.

(ii) The charge that may be assessed pursuant to this subsection shall apply to each one thousand cubic feet (1,000 cf) of natural gas

produced and saved, including that from common sources of supply discovered prior to January 1, 1937.

(B) All moneys so collected shall be used solely to pay the expenses and other costs in connection with the administration of this law.

(c) Before the commission implements the collection process of any increase in the millage assessment that may be authorized by law on each barrel of oil or on each thousand cubic feet (1,000 cf) of gas, the commission shall first seek review from the Legislative Council or the Joint Budget Committee.

History. Acts 1939, No. 105, § 6; 1975, No. 166, § 1; 1981, No. 523, § 1; A.S.A. 1947, § 53-106; Acts 1991, No. 252, § 7; 2001, No. 1188, § 1; 2009, No. 1175, §§ 4, 5.

Amendments. The 2009 amendment

inserted “and saved” in (a)(2)(A)(ii) and (b)(2)(A)(ii), and made minor stylistic changes in (b)(2)(A)(ii).

Meaning of “this act”. See note to § 15-71-101.

CASE NOTES

Form of Order.

Emergency shutdown order not void for failure to state that oil pools affected by it were discovered after January 1, 1937, since order applied only to regulated fields and this section does not confer jurisdic-

tion to regulate any fields not so discovered. *Lion Oil Ref. Co. v. Bailey*, 200 Ark. 436, 139 S.W.2d 683 (1940).

Cited: *Fife v. Thompson*, 288 Ark. 620, 708 S.W.2d 611 (1986).

15-71-108. Purchaser to deduct and remit assessment to commission — Remission by producer.

(a) A person purchasing oil in this state at the well or a person selling gas at the first point of sale under a contract or agreement requiring payments for production to the respective owners thereof, in respect of which production any sums assessed under the provisions of § 15-71-107 are payable to the Oil and Gas Commission, is authorized, empowered, and required to deduct from any sum so payable to a person the amount due the commission by virtue of the assessment and remit that sum to the commission.

(b) A person taking oil or gas from a well in this state for use or resale, in respect of which production any sums assessed under the provisions of § 15-71-107 are payable to the commission, shall remit any sum so due to the commission in accordance with the commission’s rules.

History. Acts 1939, No. 105, § 7; A.S.A. 1947, § 53-107; Acts 2009, No. 1175, § 6.

Amendments. The 2009 amendment inserted “or a person selling gas at the first point of sale” in (a); substituted “the

commission’s rules” for “those rules and regulations of the commission which may be adopted in regard thereto” in (b); and made related and minor stylistic changes.

15-71-109. Oil and Gas Commission Fund — Payment of commission vouchers.

(a) All moneys collected under the provisions of this act, when paid to the Treasurer of State, shall be deposited to the credit of the Oil and Gas Commission Fund.

(b) The Auditor of State is directed to honor vouchers drawn by the Chair of the Oil and Gas Commission or the disbursing agent designated by the Oil and Gas Commission, and the Treasurer of State is directed to pay warrants so issued. Nothing herein shall be construed to authorize the payment of any voucher unless the voucher has been audited prior to payment, as provided by law.

History. Acts 1939, No. 105, § 8; A.S.A. 1947, § 53-108.

Meaning of “this act”. See note to § 15-71-101.

15-71-110. Powers and duties — Rules and regulations.

(a)(1) The Oil and Gas Commission shall have jurisdiction of and authority over all persons and property necessary to administer and enforce effectively the provisions of this act and all other statutory authority of the commission relating to the exploration, production, and conservation of oil and gas.

(2) Production of natural gas includes both the production facilities and production process.

(3) This jurisdiction includes, but is not limited to, jurisdiction over production facilities and natural gas production facilities wherein natural gas contains one hundred (100) or more parts per million of hydrogen sulfide.

(b)(1) “Production facilities” includes, without limitation, piping or equipment used in the production, extraction, recovery, lifting, stabilization, separation, or treatment of natural gas or associated storage or measurement from the wellhead to a meter where the gas is transferred to a custodian other than the well operator for gathering or transport, commonly known as a “custodial transfer meter”.

(2) “Production process” means the extraction of gas from the geological source of supply to the surface of the earth, then through the lines and equipment used to treat, compress, and measure the gas between the wellhead and the meter, where it is either sold or delivered to a custodian other than the well operator for gathering and transportation to a place of sale, sometimes called the “custodial transfer meter”.

(c)(1) The commission shall have the authority and it shall be its duty to make inquiries as it deems proper to determine whether or not waste over which it has jurisdiction exists or is imminent.

(2) In the exercise of that power, the commission shall have the authority to:

- (A) Collect data;
- (B) Make investigations and inspections;
- (C) Examine properties, leases, papers, books, and records;

(D) Examine, check, test, and gauge oil and gas wells, tanks, refineries, and means of transportation;

(E) Hold hearings;

(F) Provide for the keeping of records and the making of reports; and

(G) Take action as reasonably necessary to enforce this act.

(d) After hearing and notice as provided in this act, the commission may make such reasonable rules, regulations, and orders as are necessary from time to time in the proper administration and enforcement of this act, including rules, regulations, or orders for the following purposes:

(1) To require:

(A) The drilling, casing, operation, and plugging of wells to be done in such a manner as to:

(i) Prevent the escape of oil or gas from one (1) stratum to another;

(ii) Prevent the intrusion of water into an oil or gas stratum from a separate stratum; and

(iii) Prevent the pollution of fresh water supplies and unnecessary damage to property, soil, animals, fish, or aquatic life by oil, gas, or salt water; and

(B) A reasonable financial assurance acceptable to the commission conditioned on the performance of the duty to plug each dry or abandoned well;

(2) To require the making of reports showing the location of oil and gas wells and the filing of logs and drilling records;

(3) To prevent the drowning by water of any stratum or part of any stratum capable of producing oil and gas in paying quantities and to prevent the premature and irregular encroachment of water which reduces, or tends to reduce, the total ultimate recovery of oil and gas from any pool;

(4) To require the operation of wells with efficient gas-to-oil ratios and to fix those ratios;

(5) To prevent blow outs, caving, and seepage in the sense that conditions indicated by those terms are generally understood in the oil and gas business;

(6) To prevent fires;

(7) To identify the ownership of all oil or gas wells, producing leases, refineries, tanks, plants, structures, and all storage and transportation equipment and facilities;

(8) To regulate the shooting, perforating, and chemical treatment of wells;

(9) To regulate secondary recovery methods, including the introduction of gas, air, water, or other substances into producing formations;

(10) To limit and prorate the production of oil or gas, or both, from any pool or field for the prevention of waste as defined in this act;

(11) To issue and regulate, either generally or in or from particular areas or wells, certificates of clearance or tenders in connection with the transportation or sale of oil or gas;

(12) To regulate the spacing of wells and to establish drilling units;

(13) To prevent, so far as is practical, reasonably avoidable drainage from each development unit which is not equalized by counter drainage regarding oil and gas;

(14) With respect to the drilling of wells for production and disposal of salt water, the commission shall have the jurisdiction of and authority over all persons and property to the extent necessary to effectively make and enforce rules, regulations, and orders for the following purposes:

(A) To require that before drilling any well in search of salt water or for the injection of salt water into the earth, the operator shall obtain from the commission a permit authorizing that drilling;

(B) To require that casing and cementing of supply wells and injection wells be done in accordance with such rules and regulations as may be promulgated by the commission;

(C) To require the plugging of wells to be done in such a manner as to:

(i) Prevent the escape of salt water out of one stratum into another;

(ii) Prevent the intrusion of salt water into an oil and gas stratum; and

(iii) Prevent the pollution of fresh water supplies by salt water;

(D) To require the making of reports showing the completing data, volume of water injected, and the filing of electrical logs of all wells with the commission;

(E) To regulate the shooting and perforating of all wells;

(F) To require the operation of wells in a manner designed to prevent blow outs, caving, and seepage;

(G) To physically identify at the site the ownership of all salt water wells, plants, ponds, structures, and all storage facilities; and

(H)(i) To require the annual payment of one hundred dollars (\$100) per well for each injection well and disposal well and each well into which debrominated brine is injected.

(ii) All moneys so collected shall be used solely to pay the expenses and other costs in the administration of this law;

(15) To administer and enforce the applicable provisions of the Natural Gas Policy Act of 1978, Pub. L. No. 95-621;

(16) To acquire primary enforcement responsibility either singularly or jointly with the Arkansas Department of Environmental Quality for the control of underground injection under the applicable provisions of the Safe Drinking Water Act, Pub. L. No. 93-523, as it existed on January 1, 2005;

(17)(A)(i)(a) To require the payment of a fee of two hundred fifty dollars (\$250) or a sum the commission may prescribe for each application for hearing or other proceeding before it under this act.

(b) The fee shall not exceed five hundred dollars (\$500); and

(ii) To prescribe a reasonable and necessary charge or fee per copy and per subscription for notices and reports prepared and published

by the commission deemed necessary to reimburse the commission for the cost of those notices and reports.

(B) All moneys so collected shall be used solely to pay the expenses and other costs in the administration of this law; and

(18) To administer and enforce any applicable provisions of the Natural Gas Pipeline Safety Act of 1968, Pub. L. No. 90-481, and to specifically empower the commission to submit any satisfactory certification required by the Natural Gas Pipeline Safety Act of 1968, Pub. L. No. 90-481, in connection with:

(A) A production process or production facility as defined in this section; or

(B) A natural gas pipeline or associated facility whose:

(i) Owner is not affiliated with an Arkansas natural gas public utility; and

(ii) Majority owner is either a production company or an affiliate of a production company; or

(19) To require any owner or operator to provide a meter reading or report of the amount of natural gas sold or to allow the commission to obtain a meter reading of the amount of natural gas sold.

(e) The commission has the following specific powers and duties in administering the Abandoned and Orphaned Well Plugging Program and the Abandoned and Orphaned Well Plugging Fund:

(1) To adopt rules necessary to implement the program, including rules regarding wells deemed abandoned in accordance with § 15-72-217;

(2) To collect the fees assessed by the commission under this chapter and to make deposits into the fund;

(3) To deposit the amount of any forfeited bond or other financial assurance into the fund;

(4) To recover well-site plugging, repair, and restoration costs from well operators who fail to reimburse the fund for expenses attributable to those well operators and to deposit any amounts reimbursed or collected into the fund;

(5) To accept, receive, and deposit into the fund any grants, gifts, or other funds that may be made available from public or private sources;

(6) To make expenditures of amounts appropriated from the fund, as the commission may deem appropriate in its sole discretion, for the sole purposes of plugging, replugging, or repairing any well or restoring the site of any well, including, but not limited to:

(A) Removal of well-site equipment or production facilities; and

(B) Reimbursement to landowners through grants for plugging a well and restoring the site of a well, including, but not limited to, removal of well-site equipment located on the landowner's property for which the landowner has no legal obligation to plug the wells or remove the well-site equipment, if the well is determined by the commission to be abandoned or ordered by the commission to be plugged, replugged, repaired, or restored;

(7) To enter into contracts and to administer a landowner grant program in accordance with applicable state law; and

(8) To dispose of well-site equipment, including an associated tank battery and production facility equipment, and any amount of hydrocarbons from the well that is stored on the lease, in a commercially reasonable manner at generally recognized market value, by either or both of the following methods after the well has been determined to be abandoned by the commission:

(A) A plugging contract may provide that the person plugging the well or remediating oil field waste pollution, or both, shall have clear title, subject to any prior perfected claim on all well-site equipment and hydrocarbons from the well that are stored on the lease or hydrocarbons recovered during the plugging operation, in exchange for a sum of money deducted as a credit from the contract price; or

(B)(i)(a) The well-site equipment, including, but not limited to, an associated tank battery and production facility equipment, hydrocarbons from the well that are stored on the lease, and hydrocarbons recovered during the plugging operation may be sold at a public auction or a public or private sale.

(b) The proceeds from any sale under subdivision (e)(8)(B)(i)(a) of this section shall be deposited in the fund.

(ii) All well-site equipment and hydrocarbons acquired by a person by sale shall be acquired under clear title subject to any prior perfected claims.

(f) Nothing in this section is to affect any hydrogen sulfide emission standards or ambient air standards enacted by the General Assembly.

History. Acts 1939, No. 105, § 11; 1969, No. 111, § 1; 1979, No. 113, § 3; 1981, No. 523, § 3; A.S.A. 1947, § 53-111; Acts 1999, No. 1047, § 1; 1999, No. 1164, § 154; 2005, No. 1267, § 1; 2007, No. 859, §§ 1, 2; 2009, No. 452, § 1; 2009, No. 1175, §§ 7-9.

A.C.R.C. Notes. Acts 1997, No. 1219, § 2, provided: “‘Arkansas Department of Pollution Control & Ecology’ renamed to ‘Arkansas Department of Environmental Quality’.

“(a) Effective March 31, 1999, the ‘Arkansas Department of Pollution Control & Ecology’ or ‘Department,’ as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the ‘Arkansas Department of Environmental Quality’ is hereby established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary le-

gal documents in order to effect this change by March 31, 1999.

“(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change.”

Publisher’s Notes. Acts 1979, No. 937, § 22, specifically repealed Acts 1969, No. 111, but also provided that it did not repeal any laws or parts of laws pertaining to oil and gas. Acts 1969, No. 111, amended subdivisions (b)(13) and (14) of this section which may be affected by this repeal. The remainder of the 1979 act is codified as § 15-76-301 et seq.

Amendments. The 2005 amendment substituted “commission may” for “commission shall have the authority to” in (d); substituted “financial assurance acceptable to the commission” for “bond” in (d)(1)(B); substituted “chapter” for “act” in (d)(10); in (d)(14)(H)(i), substituted “one hundred dollars (\$100)” for “twenty-five dollars (\$25.00)” and “injection well and disposal” for “salt water”; substituted “Pub. L.” for “Public Law” in (d)(15), (d)(16) and twice in (d)(18); substituted

“as it existed on January 1, 2005” for “as amended” in (d)(16); inserted the subdivision designations in (d)(17)(A)(i); substituted “The fee shall not” for “Provided, in no event shall the fee” in (d)(17)(A)(i)(b); inserted present (e); and redesignated former (e) as present (f).

The 2007 amendment inserted “operation” in (d)(1)(A); inserted “and unnecessary damage to property, soil, animals, fish, or aquatic life” in (d)(1)(A)(iii); in (d)(11), substituted “issue and regulate” for “require” and “particular areas or wells” for “particulate areas,” and inserted “or sale”; and made related changes.

The 2009 amendment by No. 452 inserted (d)(18)(B), redesignated the re-

maining text of (d)(18) accordingly, and made related and minor stylistic changes.

The 2009 amendment by No. 1175, in (a)(1), substituted “statutory authority of the Oil and Gas Commission” for “acts” and inserted “exploration”; in (d), inserted (d)(18)(B), redesignated the remaining text of (d)(18) accordingly, and inserted (d)(19); and made related and minor stylistic changes.

Meaning of “this act”. See note to § 15-71-101.

U.S. Code. The Natural Gas Policy Act of 1978 and the Safe Drinking Water Act, referred to in this section, are codified as 15 U.S.C. § 3301 et seq. and 42 U.S.C. § 300f et seq., respectively.

RESEARCH REFERENCES

Ark. L. Rev. Compulsory Unitization of Oil and Gas Pools, 5 Ark. L. Rev. 392.

Some Legal Problems Concerning Horizontal Development of Oil and Gas Strata in Arkansas. 19 Ark. L. Rev. 358.

U. Ark. Little Rock L. Rev. Well, Now, Ain't That Just Fugacious!: A Basic Primer on Arkansas Oil and Gas Law, 29 U. Ark. Little Rock L. Rev. 211.

CASE NOTES

ANALYSIS

Civil Actions.

Jurisdiction.

Secondary Recovery Methods.

Civil Actions.

By its terms, this section does not contemplate that the Oil and Gas Commission can adjudicate and award money damages; therefore, the commission's order denying injunctive relief would not preclude litigation of the fact questions and issues raised in the subsequent state tort action. *Richardson v. Phillips Petro. Co.*, 791 F.2d 641 (8th Cir. 1986), cert. denied, *Phillips Petroleum Co. v. Richardson*, 479 U.S. 1055, 107 S. Ct. 929, 93 L. Ed. 2d 981 (1987).

Jurisdiction.

Authority of commission to make rules regarding pollution of fresh water through operation of oil wells is not exclusive even if rules are passed by commission, hence courts have jurisdiction to issue mandatory injunction for pollution of creeks. *Spartan Drilling Co. v. Bull*, 221 Ark. 168, 252 S.W.2d 408 (1952).

Secondary Recovery Methods.

This section is not construed to mean that the commission has authority to require the use of the enumerated secondary recovery methods contrary to the wishes of the pool owners. *Dobson v. Arkansas Oil & Gas Comm'n*, 218 Ark. 160, 235 S.W.2d 33 (1950).

Cited: *El Paso Prod. Co. v. Blanchard*, 371 Ark. 634, 269 S.W.3d 362 (2007).

15-71-111. Procedural rules, regulations, or orders — Hearing.

(a)(1) The Oil and Gas Commission shall prescribe its rules of order or procedure in hearings or other proceedings before the commission.

(2) The commission's rules of order and procedure shall be adopted in accordance with the law of this state.

(3) The commission shall comply with the laws of this state and the commission's rules that are applicable to the commission's hearings and proceedings.

(b)(1) No rule, regulation, or order, including change, renewal, or extension thereof in the absence of an emergency shall be made by the commission under the provisions of this act except after a public hearing upon at least ten (10) days' notice given in the manner and form as may be prescribed by the commission.

(2) The public hearing shall be held at the time, place, and in the manner prescribed by the commission.

(3) Any person having any interest in the subject matter of the hearing shall be entitled to be heard.

(c)(1) In the event an emergency is found to exist by the commission which in its judgment requires the making, changing, renewal, or extension of a rule, regulation, or order without first having a hearing, the emergency rule, regulation, or order shall have the same validity as if a hearing with respect to that rule, regulation, or order had been held after due notice.

(2) The emergency rule, regulation, or order permitted by this subsection is effective until the date of the next regular commission hearing set to be held after the emergency rule, regulation, or order was issued.

(3) In any event, it shall expire when the rule, regulation, or order made after due notice and hearing with respect to the subject matter of the emergency rule, regulation, or order becomes effective.

(d) Should the commission elect to give notice by personal service, the service may be made by any officer authorized to serve process or by any agent of the commission in the same manner as is provided by law for the service of summons in civil actions in the circuit courts of this state. Proof of the service by the agent shall be by the affidavit of the person making personal service.

(e) All rules, regulations, and orders made by the commission shall be in writing and shall be entered in full by the director in a book to be kept for such purpose by the commission. This book shall be a public record and shall be open to inspection at all times during reasonable office hours. A copy of the rule, regulation, or order, certified by the director, shall be received in evidence in all courts of this state with the same effect as the original.

(f) Any interested person shall have the right to have the commission call a hearing for the purpose of taking action in respect to any matter within the jurisdiction of the commission by making a request therefor in writing. Upon the receipt of any request, the commission shall promptly call a hearing thereon, and, after the hearing, and with all convenient speed and in any event within thirty (30) days after the conclusion of the hearing, shall take such action with regard to the subject matter thereof as it may deem appropriate.

History. Acts 1939, No. 105, § 12; A.S.A. 1947, § 53-112; Acts 2009, No. 1175, § 10.

Amendments. The 2009 amendment rewrote (a); subdivided (b) and substituted “ten (10)” for “seven (7)” in (b)(1); subdivided (c) and substituted “subsection is effective until the date of the next

regular commission hearing set to be held after the emergency rule, regulation, or order was issued” for “section shall remain in force no longer than ten (10) days from its effective date” in (c)(2); and made a minor stylistic change.

Meaning of “this act”. See note to § 15-71-101.

CASE NOTES

ANALYSIS

Constitutionality.
Emergency Orders.

Constitutionality.

Provision in subsection (c) of this section authorizing emergency regulations without hearing is not violative of due process since no rule can be made in the absence of an emergency except after a public hearing on at least seven days' notice and emergency rule order expires automatically in ten days unless sooner terminated. *Lion Oil Ref. Co. v. Bailey*, 200 Ark. 436, 139 S.W.2d 683 (1940).

Emergency Orders.

Whether emergency for order existed

was for determination of the commission and not the courts, so long as there is substantial evidence to support it and fraud is not shown. *Lion Oil Ref. Co. v. Bailey*, 200 Ark. 436, 139 S.W.2d 683 (1940).

Emergency shutdown order not void for failure to state that waste was being committed or was imminent and that an emergency existed, since order showed on its face that it was made in the interest of conservation, to prevent waste, and the commission was acting in an emergency, even though the word “emergency” was not used in the order. *Lion Oil Ref. Co. v. Bailey*, 200 Ark. 436, 139 S.W.2d 683 (1940).

15-71-112. Subpoenas.

(a) The Oil and Gas Commission, or any member thereof, is lawfully empowered to issue subpoenas for witnesses, to require their attendance and the giving of testimony before it, and to require the production of books, papers, and records in any proceeding before the commission as may be material upon questions lawfully before the commission.

(b) Subpoenas shall be served by the sheriff or any other officer authorized by law to serve process in this state.

(c) No person shall be excused from attending and testifying, or from producing books, papers, and records before the commission or a court, or from obedience to the subpoena of the commission or a court, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him or her may tend to incriminate him or her or subject him or her to a penalty or forfeiture. Nothing contained in this section shall be construed as requiring any person to produce any books, papers, or records, or to testify in response to any inquiry, not pertinent to some question lawfully before the commission or court for determination.

(d) No natural person shall be subjected to criminal prosecution or to any penalty or forfeiture for or on account of any transaction, matter, or

thing concerning which he or she may be required to testify or produce evidence, documentary or otherwise, before the commission or court, or in obedience to its subpoena; provided, that no person testifying shall be exempted from prosecution and punishment for perjury committed in so testifying.

(e) In case of failure or refusal on the part of any person to comply with any subpoena issued by the commission or any member thereof, or in case of the refusal of any witness to testify or answer as to any matter regarding which he or she may be lawfully interrogated, any circuit court in this state, on application of the commission, may in term time or vacation issue an attachment for the person and compel him or her to comply with the subpoena and to attend before the commission and produce the documents, and give his or her testimony upon such matters, as may be lawfully required. The court shall have the power to punish for contempt as in case of disobedience of like subpoena issued by or from the court or for a refusal to testify therein.

History. Acts 1939, No. 105, § 13;
A.S.A. 1947, § 53-113.

15-71-113. Authority to acquire and maintain unmarked cars.

(a) In order to enable the Oil and Gas Commission to carry out its duties in the most effective and efficient manner, the commission is authorized to acquire and maintain for use by field personnel full-sized sedan automobiles equipped with V-8 engines in the 350 cubic inch displacement range, limited slip differentials, and vinyl seat covers.

(b) Since marked cars sometimes prove a hindrance to the commission in carrying out its inspection, investigation, and enforcement responsibilities, the commission is exempted from any and all laws and administrative regulations regarding special registration tags and special decals for state-owned vehicles.

History. Acts 1981, No. 319, § 6; A.S.A.
1947, § 53-138.

15-71-114. Permit required for field seismic operations.

(a)(1) Any person or entity desiring to perform field seismic operations in the state shall make application to the Oil and Gas Commission for a permit to do so.

(2)(A) The application for a permit shall be made on forms prescribed by the commission.

(B) The application shall include the name and principal business address of the applicant, the location in the state where the applicant plans to conduct field seismic operations, a designated agent for service of process in Arkansas, and such other information as may be prescribed by regulation of the commission.

(3)(A) The application shall be accompanied by a financial assurance acceptable to the commission in the amount of fifty thousand dollars

(\$50,000) or such larger amount as may be prescribed by the commission not to exceed two hundred fifty thousand dollars (\$250,000).

(B) The financial assurance shall be executed by the applicant, as principal, and a corporate surety approved by the commission and shall be conditioned that the permittee shall pay all damages resulting from the seismic operations.

(C) The financial assurance shall be maintained at an amount not less than fifty thousand dollars (\$50,000) nor more than two hundred fifty thousand dollars (\$250,000) as may be set by the commission, so long as the permittee is conducting field seismic operations in the state and until released by the commission.

(D)(i) Any surface owner seeking to recover under a financial assurance as described in subdivisions (a)(3)(A)-(C) of this section for damages caused by the performance of the field seismic operations shall file written notice of claim for the damages with the commission within one (1) year of the date of expiration of the permit for conducting such operations.

(ii) However, the claim shall be subordinate to the rights of the commission under the financial assurance to secure compliance by the permittee with the provisions of this section and the rules and regulations of the commission promulgated under this section.

(b) The commission shall have authority to make such reasonable rules, regulations, and orders as necessary from time to time for the proper administration and enforcement of this section and to require the payment of a registration fee of two hundred fifty dollars (\$250) or such sum as the commission may prescribe for each application for registration filed under this section. However, in no event shall the fee exceed five hundred dollars (\$500).

(c) It is unlawful for any person or entity to perform any field seismic operations in the state unless the person or entity first obtains a permit to do so as provided for in this section.

(d)(1) Any person who conducts any field seismic operation in the state without having obtained a permit under this section or without having fully complied with the provisions of this section or any rules and regulations adopted by the commission under this section is subject to a civil penalty of two thousand five hundred dollars (\$2,500) for each day the operation continues.

(2) Any person who, for the purpose of evading this section or any rule, regulation, or order made under this section, intentionally makes or causes to be made any false entry or statement of fact in any application report required to be made by this section or by any rule, regulation, or order made under this section, or who, for such a purpose, omits to make or causes to be omitted, any entry, statement of fact, or report required to be made by this section or any rule, regulation, or order made under this section, or who, for such a purpose, moves out of the jurisdiction of the state, shall be guilty of a misdemeanor and shall be subject to a fine of not more than five thousand dollars (\$5,000) or

imprisonment for a term of not more than six (6) months, or to both such fine and imprisonment.

History. Acts 1991, No. 5, §§ 1-3; 1993, No. 342, § 1; 2005, No. 1267, § 2; 2009, No. 1175, § 11.

Amendments. The 2005 amendment substituted “financial assurance acceptable to the commission” for “bond” in (a)(3)(A); substituted “financial assurance” for “bond” in (a)(3)(B) and (C); inserted the subdivision designations in (a)(3)(D); in present (a)(3)(D)(i), substituted “a financial assurance ... of this section” for “such bond” and “for the damages with the commission” for “therefor with the Oil and Gas Commission”; and,

in present (a)(3)(D)(ii), substituted “However, the” for “provided, however, that such,” “commission under ... compliance by the permittee” for “Oil and Gas Commission under said bond to secure compliance by said permittee” and “under this section” for “thereunder” and deleted “as hereby amended” following “of this section.”

The 2009 amendment substituted “civil penalty of two thousand five hundred dollars (\$2,500)” for “fine of one thousand dollars (\$1,000)” in (d)(1), and made minor stylistic changes.

15-71-115. Abandoned and Orphaned Well Plugging Fund.

(a) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a special revenue fund to be known as the “Abandoned and Orphaned Well Plugging Fund”.

(b)(1) The fund shall receive funds from:

- (A) Fees assessed by the Oil and Gas Commission;
- (B) Forfeited bonds;
- (C) Proceeds from the sale of hydrocarbons and production equipment located at the site of abandoned and orphaned wells;
- (D) Grants and gifts from private and public sources; and
- (E) Any other revenue as may be authorized by law.

(2) All moneys collected under the fund shall be deposited into the State Treasury to the credit of the fund as special revenues.

(c)(1) The fund shall be used by the commission to:

- (A) Make expenditures through contracts to plug abandoned and orphaned wells and to remediate associated production facilities;
- (B) Award grants to landowners to plug abandoned and orphaned wells and to remediate associated production facilities; and
- (C) Make expenditures for emergency repairs to wells or production facilities endangering the public health and safety.

(2) Expenditures from the fund may be authorized by the commission through contracts or grants for the payment of plugging costs or the cost of performing corrective work as follows:

- (A) If after the commission gives the well operator notice and hearing and finds that an abandoned well must be plugged, that a leaking well must be plugged, replugged, or repaired, or that a well site must be restored and the well operator fails to perform the required plugging, replugging, repair, or restoration work within the time frame prescribed in the commission order, the commission may authorize fund expenditures to plug, replug, or repair the well or wells and to restore the well site in accordance with commission rules; and

(B) If the abandoned well or well site operator cannot be identified or located for purposes of notice and hearing, the commission may administratively determine the well or well site to be orphaned, as defined by commission rules, and may authorize expenditures from the fund to plug the orphaned well and restore the orphaned well site.

(d) The fund may be used by the commission to provide security in the event an oil or gas well operator fails to perform plugging responsibilities under the provisions of § 15-72-217 or fails to correct well conditions that create an imminent danger to the health or safety of the public or threaten significant environmental harm or damage to property.

History. Acts 2005, No. 1265, § 1; 207, this section is set out above as enacted by Acts 2005, Nos. 1265 and 1267.

A.C.R.C. Notes. Pursuant to § 1-2-

15-71-116. Annual fee assessment.

(a)(1) The Oil and Gas Commission shall establish by rule a fee structure to be paid annually by well operators of only those wells producing liquid hydrocarbons.

(2) The date for payment of the first annual fee assessment shall be determined by rule.

(3) All annual fees collected shall be deposited into the Abandoned and Orphaned Well Plugging Fund.

(b)(1) All bonds or other financial assurances in effect on August 12, 2005, shall remain in effect until released by the commission from obligation through payment of the initial fund fee assessment under this section.

(2)(A) Additionally, a person shall file and maintain with the commission the amount of financial security required under this section for two (2) consecutive calendar years of payments to the fund until the required payments have been made if the person is a well operator who:

(i) Did not operate a well before August 12, 2005; or

(ii) Has not after August 12, 2005, made annual payments to the fund for at least two (2) consecutive calendar years preceding an application to drill or transfer wells.

(B)(i) When the operator has made the required payments, the financial security shall be released.

(ii) However, the financial security shall not be released under subdivision (b)(2)(B)(i) of this section if the commission has filed a claim against the financial security instrument.

(c)(1) Fees shall be assessed for each calendar year, commencing on a date to be established by the commission, for all wells of record on January 1 of each year and each subsequent year.

(2) The fees assessed by the commission under this section are in addition to any other fees required by law.

(3) All fees assessed under this section shall be submitted to the commission no later than sixty (60) days after the date listed on the annual fee assessment letter sent to the well operator.

(d) All the fees assessed and collected by the commission each year under this section shall be deposited into the fund.

(e) If a well operator is delinquent for more than sixty (60) days in the payment of fees assessed under this section or if amounts have been expended from the fund to plug, repair, or restore an operator’s well or well site, no further permits may be issued to that operator, and the commission may issue an order to cease production of that operator’s current wells until all delinquent fees and expended fund moneys have been repaid to the fund.

History. Acts 2005, No. 1266, § 1.

CHAPTER 72
OIL AND GAS PRODUCTION AND CONSERVATION

SUBCHAPTER

- 1. GENERAL PROVISIONS.
- 2. WELLS AND DRILLING GENERALLY.
- 3. POOLS AND DRILLING UNITS.
- 4. ILLEGAL OIL AND GAS.
- 5. SECONDARY RECOVERY.
- 6. UNDERGROUND STORAGE OF GAS.
- 7. EXPLORATION.
- 8. EMERGENCY PETROLEUM SET-ASIDE ACT.
- 9. INTERSTATE COMPACT TO CONSERVE OIL AND GAS.
- 10. ENHANCED RECOVERY.

Effective Dates. Acts 1939, No. 105, § 29: approved Feb. 20, 1939. Emergency clause provided: “It is hereby declared that existing laws determining the authority of the state and the Arkansas Board of Conservation to conserve the oil and gas resources of the state, do not sufficiently define such authority, and such condition has greatly handicapped

the Arkansas Board of Conservation in the proper administration of its duties; therefore, an emergency is hereby declared to exist, and it being necessary for the immediate preservation of the public peace, health, and safety, this act shall take effect and be in full force from and after its passage.”

RESEARCH REFERENCES

Ark. L. Rev. Intrastate Marketing of Gas, The Implied Covenant to Market and the Shut-In Gas Well Royalty, 17 Ark. L. Rev. 104.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.
15-72-101. Declaration of policy.

SECTION.
15-72-102. Definitions.

SECTION.

- 15-72-103. Penalty.
 15-72-104. Falsifying or failing to keep records — Willfully violating the Safe Drinking Water Act.
 15-72-105. Prohibition on wasting oil or gas.
 15-72-106. Court review by aggrieved person — Injunction.

SECTION.

- 15-72-107. Notice prerequisite to temporary restraining order or injunction.
 15-72-108. Injunctions for enforcement.
 15-72-109. Application to drill — Applicant address.
 15-72-110. Appeals.

Cross References. Bond required for driving of heavy oil and gas equipment, § 27-66-507.

Energy Conservation Endorsement Act of 1977, § 23-3-401 et seq.

Effective Dates. Acts 1981, No. 523, § 8: Mar. 16, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the best interests of the State of Arkansas can be

served by the enactment of this legislation, and this Act being necessary for the continued operation of the Oil and Gas Commission should be immediately effective. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force from and after its passage and approval."

RESEARCH REFERENCES

Am. Jur. 38 Am. Jur. 2d, Oil & G., § 145 et seq.

15-72-101. Declaration of policy.

In recognition of past, present, and imminent evils occurring in the production and use of oil and gas as a result of waste in the production and use thereof in the absence of coequal or correlative rights of owners of crude oil or natural gas in a common source of supply to produce and use the crude oil or natural gas, this law is enacted for the protection of public and private interests against such evils by prohibiting waste and compelling ratable production.

History. Acts 1939, No. 105, § 1; A.S.A. 1947, § 53-101.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Wright, The Arkansas Law of Oil and Gas, 9 U. Ark. Little Rock L.J. 223.

Note, Oil and Gas — Deductions Under

a Proceeds Royalty Lease — Arkansas Puts the Pressure on Lessee, 12 U. Ark. Little Rock L.J. 395.

CASE NOTES

Means for Implementing.

As a state administrative agency with a statutory mandate to conserve this state's natural resource, the measures enumerated in the Oil and Gas Commission's enabling act are the exclusive means by which the commission can attain that

goal. *Richardson v. Phillips Petro. Co.*, 791 F.2d 641 (8th Cir. 1986), cert. denied, *Phillips Petroleum Co. v. Richardson*, 479 U.S. 1055, 107 S. Ct. 929, 93 L. Ed. 2d 981 (1987).

Cited: *Jameson v. Ethyl Corp.*, 271 Ark. 621, 609 S.W.2d 346 (1980).

15-72-102. Definitions.

As used in this act:

(1) "Commission" means the Oil and Gas Commission;
(2)(A) "Field" means the general area which is underlaid or appears to be underlaid by at least one (1) pool. "Field" includes the underground reservoir or reservoirs containing crude petroleum oil or natural gas, or both.

(B)(i) The words "field" and "pool" mean the same thing when only one (1) underground reservoir is involved.

(ii) However, "field", unlike "pool", may relate to two (2) or more pools;

(3) "Gas" means all natural gas, including casing-head gas, and all other hydrocarbons not defined as oil in subdivision (7) of this section;

(4) "Illegal gas" means gas which has been produced within the State of Arkansas from any well during any time that that well has produced in excess of the amount allowed by any rule, regulation, or order of the commission, as distinguished from gas produced within the State of Arkansas from a well not producing in excess of the amount so allowed, which is "legal gas";

(5) "Illegal oil" means oil which has been produced within the State of Arkansas from any well during any time that that well has produced in excess of the amount allowed by rule, regulation, or order of the commission, as distinguished from oil produced within the State of Arkansas from a well not producing in excess of the amount so allowed, which is "legal oil";

(6) "Illegal product" means any product of oil or gas, any part of which was processed or derived, in whole or in part, from illegal oil or illegal gas or from any product thereof as distinguished from "legal product", which is a product processed or derived to no extent from illegal oil or illegal gas;

(7) "Oil" means crude petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the reservoir;

(8) "Operator" means the person who has the right as an owner or by agreement with an owner to enter upon the lands of another for the purposes of exploring, drilling, and developing for the production of brine, oil, gas, and all other petroleum hydrocarbons;

(9) "Owner" means the person who has the right to drill into and to produce from any pool and to appropriate the production either for himself or herself, or for himself or herself and another, or others;

(10) "Person" means any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary, federal agency, or representative of any kind;

(11)(A) "Pool" means an underground reservoir containing a common accumulation of crude petroleum oil or natural gas, or both.

(B) Each zone of a general structure which is completely separated from any other zone in the structure is covered by the term "pool";

(12) "Producer" means the owner of wells capable of producing oil or gas, or both;

(13) "Product" means any commodity made from oil or gas and includes refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casing-head gasoline, natural gas gasoline, naphtha, distillate, gasoline, kerosene, benzene, wash oil, waste oil, blended gasoline, lubricating oil, blends or mixtures of oil with one (1) or more liquid products or by-products derived from oil or gas, and blends or mixtures of two (2) or more liquid products or by-products derived from oil or gas, whether enumerated in this subdivision (13) or not;

(14) "Tender" means a permit or certificate of clearance for the transportation of oil, gas, or products approved and issued or registered under the authority of the commission; and

(15) "Waste", in addition to its ordinary meaning, means "physical waste" as that term is generally understood in the oil and gas industry. "Waste" includes:

(A) The inefficient, excessive, or improper use or dissipation of reservoir energy and the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner which results, or tends to result, in reducing the quantity of oil or gas ultimately to be recovered from any pool in this state;

(B) The inefficient storing of oil and the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner causing, or tending to cause, unnecessary or excessive surface loss or destruction of oil or gas;

(C) Abuse of the correlative rights and opportunities of each owner of oil and gas in a common reservoir due to nonuniform, disproportionate, and unratable withdrawals causing undue drainage between tracts of land;

(D) Producing oil or gas in such manner as to cause unnecessary water channeling or coning;

(E) The operation of any oil well or wells with an inefficient gas-oil ratio;

(F) The drowning with water of any stratum or part thereof capable of producing oil or gas;

(G) Underground waste however caused and whether or not defined;

(H) The creation of unnecessary fire hazards;

(I) The escape into the open air of gas in excess of the amount that is necessary for the efficient drilling or operation of a well producing both oil and gas;

(J) The use of gas for the manufacture of carbon black; and

(K) Permitting gas produced from a gas well to escape into the air.

History. Acts 1939, No. 105, § 9; 1981, No. 523, § 2; A.S.A. 1947, § 53-109; Acts 2005, No. 137, § 1.

Amendments. The 2005 amendment added (8).

Meaning of "this act". Acts 1939, No. 105, codified as §§ 15-71-101 — 15-71-112, 15-72-101 — 15-72-110, 15-72-205, 15-72-212, 15-72-216, 15-72-301 — 15-72-324, 15-72-401 — 15-72-407.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Note, Oil and Gas — Deductions Under a Proceeds Royalty Lease — Arkansas Puts the Pressure on Lessee, 12 U. Ark. Little Rock L.J. 395.

CASE NOTES

Cited: Phillips Pipe Line Co. v. United States, 40 F. Supp. 981 (Ct. Cl. 1941); Young v. Ethyl Corp., 521 F.2d 771 (8th Cir. 1975).

15-72-103. Penalty.

(a)(1) Any person who violates any provision of this subchapter or any rule, regulation, or order of the Oil and Gas Commission made hereunder shall be, in the event a penalty for the violation is not otherwise provided for in this subchapter, subject to a penalty not to exceed two thousand five hundred dollars (\$2,500) a day for each and every day of violation, and for each and every act of violation.

(2)(A) If the penalty is not recovered by the commission within the time frame specified by the commission, the penalty may be recovered in a suit in the circuit court of the county where the defendant resides in the county of the residence of any defendant if there is more than one (1) defendant, or in the circuit court of the county where the violation took place.

(B) The place of suit shall be selected by the commission.

(3) The suit, by direction of the commission, shall be instituted and conducted in the name of the commission by the attorney for the commission or by the Attorney General or under his or her direction by the prosecuting attorney of the county where the suit is instituted.

(b) The payment of any penalty as provided for in this section shall not have the effect of changing illegal oil into legal oil, illegal gas into legal gas, or illegal product into legal product, nor shall the payment have the effect of authorizing the sale, purchase, acquisition, transportation, refining, processing, or handling in any other way of such illegal oil, illegal gas, or illegal product, but to the contrary, penalty shall be imposed for each prohibited transaction relating to the illegal oil, illegal gas, or illegal product.

(c) Any person knowingly and willfully aiding or abetting any other person in the violation of any statute of this state relating to the conservation of oil or gas, or the violation of any provision of this act, or any rule, regulation, or order made thereunder shall be subject to the same penalties as are prescribed herein for the violation by the other person.

History. Acts 1939, No. 105, § 22; 1981, No. 523, § 5; A.S.A. 1947, § 53-122; Acts 2007, No. 859, § 3.

Amendments. The 2007 amendment redesignated former (a) as present (a)(1); in (a)(1), substituted “subchapter” for “act” twice and substituted “Oil and Gas Commission” for “commission”; added the (a)(2)(A), (a)(2)(B) and (a)(3) designations;

in (a)(2)(A), inserted “If the penalty is not recovered by the commission within the time frame specified by the commission” and substituted “may” for “shall”; inserted “or her” in (a)(3); and made related and stylistic changes.

Meaning of “this act”. See note to § 15-72-102.

15-72-104. Falsifying or failing to keep records — Willfully violating the Safe Drinking Water Act.

(a) Any person shall be deemed guilty of a misdemeanor and shall be subject, upon conviction in any court of competent jurisdiction, to a fine of not more than five thousand dollars (\$5,000), or to imprisonment for a term of not more than six (6) months, or to both fine and imprisonment if that person, for the purpose of evading this act, or of evading any rule, regulation, or order made hereunder:

(1) Shall intentionally make or cause to be made any false entry or statement of fact in any report required to be made by this act or by any rule, regulation, or order made hereunder;

(2) Shall make or cause to be made any false entry in any account, record, or memorandum kept by any person in connection with the provisions of this act or of any rule, regulation, or order made hereunder;

(3) Shall omit to make, or cause to be omitted, full, true, and correct entries in the accounts, records, or memoranda, of all facts and transactions pertaining to the interest or activities in the petroleum industry of that person as may be required by the commission under authority given in this act or by any rule, regulation, or order made hereunder;

(4) Shall remove out of the jurisdiction of the state or shall mutilate, alter, or by any other means falsify any book, record, or other paper pertaining to the transactions regulated by this act, or by any rule, regulation, or order made hereunder.

(b) Any person who willfully violates any program requirement under the applicable provisions of the Safe Drinking Water Act, Public Law 93-523, as amended, for the control of underground injection shall be deemed guilty of a misdemeanor and shall be subject to the penalty provided in subsection (a) of this section.

History. Acts 1939, No. 105, § 21; 1981, No. 523, § 4; A.S.A. 1947, § 53-121.

Meaning of "this act". See note to § 15-72-102.

U.S. Code. The Safe Drinking Water Act, Public Law 93-523, referred to in this section, is codified as 42 U.S.C. § 300f et seq.

15-72-105. Prohibition on wasting oil or gas.

Waste of oil or gas as defined in this act is prohibited.

History. Acts 1939, No. 105, § 10; A.S.A. 1947, § 53-110.

Meaning of "this act". See note to § 15-72-102.

CASE NOTES

Powers of Commission.

This section does not delegate to the commission the power to impose any means of waste prevention that it may

choose. *Dobson v. Arkansas Oil & Gas Comm'n*, 218 Ark. 160, 235 S.W.2d 33 (1950).

15-72-106. Court review by aggrieved person — Injunction.

(a) Any interested person adversely affected by any statute of this state with respect to conservation of oil or gas, or both; by any provisions of this act; by any rule, regulation, or order made by the Oil and Gas Commission hereunder; or by any act done or threatened hereunder, and who has exhausted his or her administrative remedy, may obtain court review and seek relief by a suit for injunction against the commission as defendant or against the members of the commission by suit in the circuit court of the county in which the property involved is located.

(b) The suit shall have precedence over all other causes, proceedings, or suits on the docket of a different nature, and the attorney representing the commission may have the case set for trial after ten (10) days' notice to the plaintiff or his or her attorney.

(c) In the trial, the burden of proof shall be upon the plaintiff, and all pertinent evidence with respect to the validity and reasonableness of the order of the commission complained of shall be admissible.

(d) The statute, provision of this act, or the rule, regulation, or order complained of shall be taken as prima facie valid, and such presumption shall not be overcome in connection with any application for injunctive relief, including temporary restraining order, by verified bill or affidavit of or in behalf of the applicant.

(e) The right of review accorded by this section shall be inclusive of all other remedies, but the right of appeal shall lie as hereinafter set forth.

History. Acts 1939, No. 105, § 17; A.S.A. 1947, § 53-117.

Meaning of "this act". See note to § 15-72-102.

CASE NOTES**Commission's Orders.**

An adjudicatory in rem order of the Oil and Gas Commission, when final, would have all the force and effect of a court judgment and, generally, would fix the parties' rights and duties as fully and finally as a court judgment, and would be entitled to the same full faith and credit and preclusive effect. *Katter v. Arkansas La. Gas Co.*, 765 F.2d 730 (8th Cir. 1985).

15-72-107. Notice prerequisite to temporary restraining order or injunction.

(a) No temporary restraining order or injunction of any kind shall be granted against the commission or members thereof, or against the Attorney General, or against any agent, employee, or representative of the Oil and Gas Commission, restraining the commission or any of its members, agents, employees, or representatives, or the Attorney General from enforcing any statute of this state or any rule, regulation, or order made thereunder except after three (3) days' notice served upon some person in the principal office of the commission of the time, place, and court before which application for the order shall be made.

(b) If the commission shall so request at the hearing, it shall be entitled to a trial on the merits within ten (10) days after the granting of any temporary order. If the plaintiff is not ready for trial at that time, the court shall be authorized to dissolve the temporary restraining order.

History. Acts 1939, No. 105, § 18; A.S.A. 1947, § 53-118.

15-72-108. Injunctions for enforcement.

(a) Whenever it shall appear that any person is violating, or threatening to violate, any statute of this state with respect to the conservation of oil or gas, or both, or any provision of this act, or any rule, regulation, or order made thereunder by any act done in the operation of any well producing oil or gas or by omitting any act required to be done thereunder, the Oil and Gas Commission through its counsel or the Attorney General may bring suit against that person in the circuit court in the county in which the well in question is located, to restrain the person from continuing the violation or from carrying out the threat of violation.

(b) In the suit the commission may obtain injunctions, prohibitory and mandatory, including temporary restraining orders and temporary injunctions, as the facts may warrant, including, when appropriate, an injunction restraining any person from moving or disposing of illegal oil, illegal gas, or illegal product. Any or all such commodities may be ordered to be impounded or placed under the control of an agent appointed by the court if, in the judgment of the court, the action is advisable.

(c) If the defendant cannot be personally served with summons in that county, personal jurisdiction of that defendant in the suit may be

obtained by service made on any employee or agent of that defendant working on or about the oil or gas well involved in the suit and by the commission's mailing a copy of the complaint in the action to the defendant at the address of the defendant then recorded with the Director of the Oil and Gas Commission.

History. Acts 1939, No. 105, § 19; **Meaning of "this act".** See note to A.S.A. 1947, § 53-119. § 15-72-102.

15-72-109. Application to drill — Applicant address.

Each application for the drilling of a well in search of oil or gas in this state shall include the address of the residence of the applicant or of each applicant, which address shall be the address of each person involved in accordance with the records of the Director of the Oil and Gas Commission until the address is changed on the records of the Oil and Gas Commission after written request.

History. Acts 1939, No. 105, § 19; A.S.A. 1947, § 53-119.

15-72-110. Appeals.

In all proceedings brought under authority of this act, of any oil or gas conservation statute of this state, or of any rule, regulation, or order issued thereunder and in all proceedings instituted for the purpose of contesting the validity of any provision of the act, of any oil or gas conservation statute, or of any rule, regulation, or order issued thereunder, appeals may be taken in accordance with the general laws of the State of Arkansas relating to appeals. However, in all appeals from judgments or decrees in suits to contest the validity of any provision of this act, or any rule or regulation of the Oil and Gas Commission hereunder, the appeals when docketed in the Supreme Court shall take precedence over other cases on the docket of that court and may be advanced as that court may order and direct.

History. Acts 1939, No. 105, § 20; **Meaning of "this act".** See note to A.S.A. 1947, § 53-120. § 15-72-102.

CASE NOTES

Cited: Amoco Prod. Co. v. Ware, 269 Ark. 313, 602 S.W.2d 620 (1980).

SUBCHAPTER 2 — WELLS AND DRILLING GENERALLY

SECTION.

15-72-201. Definitions.

15-72-202. Penalties for violation of certain sections.

SECTION.

15-72-203. Prerequisite to exploring or drilling — Notice to surface owner.

SECTION.

- 15-72-204. Prerequisite for drilling permit — Operator's proof of financial responsibility.
- 15-72-205. Notice of intent to drill — Permit and fee.
- 15-72-206. Casing oil or gas wells — Keeping sands separate.
- 15-72-207. Log requirements generally.
- 15-72-208. Proper confinement of gas by possessor of well.
- 15-72-209. Right of others to confine gas.
- 15-72-210. Gas leaks in pipelines, machinery, etc.
- 15-72-211. Flambeau lights.
- 15-72-212. Failure to control wild wells.
- 15-72-213. Surface owner's lien for damages caused by operator neglect.

SECTION.

- 15-72-214. Surface owner's claim for damages caused by operator neglect.
- 15-72-215. [Repealed.]
- 15-72-216. Requirement that dry or abandoned wells be plugged — Notice of abandonment.
- 15-72-217. Plugging dry or abandoned well by lessee or operator.
- 15-72-218. Plugging dry or abandoned well by another.
- 15-72-219. Compensation of surface owners and surface tenants for damages — Restoration of land.

Cross References. Mechanics' and materialmen's liens, § 18-44-201 et seq.

Effective Dates. Acts 1917, No. 166, § 19: approved Mar. 3, 1917. Emergency clause provided: "This act being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in force and effect from and after its passage."

Acts 1925, No. 132, § 4: effective on passage.

Acts 1979, No. 113, § 6: Feb. 13, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that existing laws determining the authority of the Oil and Gas Commission, do not sufficiently define such authority; therefore, an emergency is hereby declared to exist, and it being necessary for the immediate preservation of the public peace, health and safety, this Act shall take effect and be in full force from and after its passage and approval."

Acts 1981, No 523, § 8: Mar. 16, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the best interests of the State of Arkansas can be served by the enactment of this legislation, and this Act being necessary for the continued operation of the Oil and Gas Commission should be immediately effective. Therefore, an emergency is hereby declared to exist and

this Act being necessary for the preservation of the public peace, health and safety shall be in full force from and after its passage and approval."

Acts 1985, No. 559, § 3: Mar. 25, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the best interests of the State of Arkansas can be served by the enactment of this legislation, and this Act being necessary for the continued operation of the Oil and Gas Commission should be immediately effective. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 559, § 5: Mar. 14, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the best interests of the State of Arkansas can be served by the enactment of this legislation and that this Act should be given immediate effect. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Am. Jur. 38 Am. Jur. 2d, Oil & G., Arkansas Law of Oil and Gas, 10 U. Ark. § 145 et seq.
U. Ark. Little Rock L.J. Wright, The

15-72-201. Definitions.

As used in this act, unless the context otherwise requires:

(1) “Operator” means the person who has the right to enter upon the lands of another for the purpose of exploring, drilling, and developing for the production of brine, oil, gas, and all other petroleum hydrocarbons;

(2) “Person” means any natural person, corporation, association, partnership, trustee, guardian, executor, administrator, fiduciary, or representative of any kind; and

(3) “Surface owner” means the owner or owners of record of the surface of the property on which the drilling operation is to occur.

History. Acts 1983, No. 902, § 1; A.S.A. 902, codified as §§ 15-72-201, 15-72-203, 1947, § 53-216. 15-72-204, 15-72-213.

Meaning of “this act”. Acts 1983, No.

15-72-202. Penalties for violation of certain sections.

(a) Any person, firm, or corporation violating § 15-72-206, § 15-72-208(a), § 15-72-217, § 15-72-208(b), § 15-72-210, or § 15-72-211 is subject to a civil penalty for each violation not to exceed two thousand five hundred dollars (\$2,500), to be assessed by the Oil and Gas Commission.

(b) If the civil penalty is not recovered by the commission within the time frame specified by the commission, the civil penalty and a reasonable attorney’s fee to be fixed by the court may be recovered in an action brought by the commission in the name of the State of Arkansas.

(c) The civil penalty and attorney’s fees collected shall be turned into the general road fund of the county where a leak is located to be used on the roads, bridges, and highways of the county, in the discretion of the county court.

History. Acts 1917, No. 166, §§ 5, 7, p. 890; C. & M. Dig., §§ 7303, 7305; Pope’s Dig., §§ 9359, 9361; A.S.A. 1947, §§ 53-205, 53-207; Acts 2007, No. 859, § 4; 2009, No. 1175, § 12.

Amendments. The 2007 amendment rewrote (a)(1) and (b)(1); and substituted

“fines and attorney’s fees” for “penalties” in (a)(2) and (b)(2).

The 2009 amendment redesignated (a) as present (a) through (c); rewrote present (a); substituted “civil penalty” for “fine” in (b) and for “proceeds of fines” in (c); and deleted former (b).

15-72-203. Prerequisite to exploring or drilling — Notice to surface owner.

(a) Before entering upon a site for the purpose of exploration or for oil or gas drilling, except in instances where there are nonresident surface owners, nonresident surface tenants, unknown heirs, imperfect titles, or surface owners or surface tenants whose whereabouts cannot be ascertained with reasonable diligence, the operator shall give to the surface owner written notice of his or her intent of exploration or undertaking drilling operations on premises owned by the surface owner. The notice shall contain the proposed location and the approximate date that the operator proposes to commence exploration or drilling operations.

(b) The notice shall be given in writing by certified United States mail, or personally, to the surface owner at the address of the surface owner as is reflected in the records of the tax collector of the county in which the lands are located.

History. Acts 1983, No. 902, § 2; A.S.A. 1947, § 53-217.

15-72-204. Prerequisite for drilling permit — Operator's proof of financial responsibility.

(a) Before the Oil and Gas Commission issues a permit to drill, an operator who is doing business in this state and is not subject to the provisions of § 15-71-116 shall file proof of financial responsibility with the commission.

(b) Before the commission transfers a well and issues a producer's certificate of compliance and authorization to transport oil or gas, a person who acquires the right of an operator of an existing well and is not subject to the provisions of § 15-71-116 shall file proof of financial responsibility with the commission.

History. Acts 1983, No. 902, § 3; A.S.A. 1947, § 53-218; Acts 1991, No. 559, § 1; 2009, No. 1175, § 13. **Meaning of "this act".** See note to § 15-72-201.

Amendments. The 2009 amendment rewrote the section.

15-72-205. Notice of intent to drill — Permit and fee.

(a) Before any well shall be drilled in search of oil or gas, the person desiring to drill the well shall notify the commission upon a form the commission may prescribe and shall pay a fee of one hundred fifty dollars (\$150) or any sum the commission may prescribe for each well; provided, in no event shall the fee exceed three hundred dollars (\$300).

(b) The drilling of any well is prohibited until the notice is given and the fee has been paid and permit granted.

History. Acts 1939, No. 105, § 25; 1979, No. 113, § 4; 1981, No. 523, § 6; A.S.A. 1947, § 53-125.

15-72-206. Casing oil or gas wells — Keeping sands separate.

(a) The owner or operator of any well put down for the purpose of exploring for, or producing, oil or gas, shall, during the course of drilling, case off all fresh or salt water from each oil-producing or gas-producing sand encountered while drilling, the casing to be set in the well in such manner as to exclude all water from penetrating the first into a lower oil-bearing or gas-bearing sand, the well shall be cased in such manner as to exclude all fresh or salt water from all oil-bearing or gas-bearing sands encountered during the course of the drilling operations.

(b) Should any well so drilled produce oil or gas in paying quantities through the first or any succeeding oil-bearing or gas-bearing sand, the oil or gas shall be conserved by either casing or mudding it off, so as to confine it in the gas-bearing or oil-bearing sand where found.

History. Acts 1917, No. 166, § 1, p. 890; C. & M. Dig., § 7299; Pope's Dig., § 9355; A.S.A. 1947, § 53-201; Acts 2007, No. 859, § 5.

deleted "or, if gas or oil is to be utilized from different sands in the same well, it shall be taken through different strings of casing or tubing" from the end of (b) and made related changes.

Amendments. The 2007 amendment

15-72-207. Log requirements generally.

(a) It shall be the duty of the owner of any well drilled for gas or oil to keep a careful and accurate log of the drilling of the well.

(b) The log shall show:

(1) The character and depth of the formation passed through or encountered in the drilling of the well; and

(2) The location and depth of the water-bearing strata, together with the character of the water encountered from time to time; and

(3) At what point the water was shut off, if at all, and if not, so state in the log; and

(4) The depth at which oil-bearing or gas-bearing strata is encountered; and

(5) The character of the oil-bearing or gas-bearing strata; and

(6) Whether all water overflowing or underlying the oil-bearing or gas-bearing strata was successfully and permanently shut off, so as to prevent the percolation or penetration into the oil-bearing or gas-bearing strata.

(c) The log shall:

(1) Be verified by the person in charge of the drilling;

(2) Be attested as correct by the owners of the well;

(3) Be filed with the county clerk of the county in which the well is located, and preserved by him or her in the public records; and

(4) Definitely describe the location of the well.

History. Acts 1917, No. 166, § 6, p. 890; C. & M. Dig., § 7304; Pope's Dig., § 9360; A.S.A. 1947, § 53-206.

15-72-208. Proper confinement of gas by possessor of well.

(a) Any person, copartnership, corporation, owner, lessee, or manager in possession of any well producing natural gas, in order to prevent the gas from wasting by escape shall, within four (4) days after penetrating the gas-bearing sand in any well drilled, shut in and confine the gas in the well until the gas therein shall be utilized for light, fuel, or steam power.

(b)(1) It shall be unlawful for any person, firm, or corporation having possession or control of any gas well, whether as contractor, owner, lessee, or manager, to allow or permit the flow of natural gas of any such well to flow into the open air without being confined to such well or pipe or other safe receptacles for a longer period than three (3) days after the gas shall have been struck and produced in that well.

(2) If the well cannot be confined within three (3) days, the person controlling the well shall continue with the utmost diligence to confine it as soon as possible.

(c) Failure to comply with subsection (b) of this section shall subject the person failing to the penalties and procedure set out in § 15-72-202 (b).

History. Acts 1917, No. 166, §§ 2, 8, p. 890; C. & M. Dig., §§ 7300, 7306; Pope's Dig., §§ 9356, 9362; A.S.A. 1947, §§ 53-202, 53-208.

CASE NOTES

Negligence.

Well owner held not liable for death occurring during capping of well. Con-

stantin Ref. Co. v. Martin, 155 Ark. 193, 244 S.W. 37 (1922).

15-72-209. Right of others to confine gas.

In addition to the penalties described in § 15-72-202 for failure to confine natural gas, any person or corporation lawfully in possession of lands upon which the gas well is situated or adjoining or adjacent thereto or in the vicinity of the well may enter upon the lands on which such well is situated and take possession of the well from which the gas is allowed to escape in violation of § 15-72-202, after the failure for ten (10) hours of the party in control thereof to use the utmost diligence to confine the gas, pack and tube the well, and shut in and secure the flow of gas, and may maintain a civil action in any court of competent jurisdiction in this state against the owner, lessee, agent, or manager of the well, and each of them, jointly or severally, to recover the cost and expense of the tubing and packing, together with attorney's fees to be taxed as part of the cost.

History. Acts 1917, No. 166, § 9, p. 890; C. & M. Dig., § 7307; Pope's Dig., § 9363; A.S.A. 1947, § 53-209.

15-72-210. Gas leaks in pipelines, machinery, etc.

(a) It is the duty of any person discovering any leak in any pipeline for the transportation of natural gas, or in any machinery, apparatus, or device used in the regulation, distribution, or transportation thereof immediately to notify the owner of the pipeline or other appliance and also to notify the gas inspector of the leak.

(b) It is the duty of the owner of the pipeline or other apparatus from which gas is escaping to immediately repair it.

(c) It is the duty of the gas inspector on receiving reliable information of the leak or on personal knowledge thereof immediately to notify the owner of the pipeline or appliance of the leak and to immediately repair it.

(d) Should the owner of the pipeline, apparatus, appliance, or device fail to at once repair the leak or use the utmost diligence to do so, he or she shall be subject to the penalty set out in § 15-72-202 (b).

History. Acts 1917, No. 166, § 7, p. 890; C. & M. Dig., § 7305; Pope's Dig., § 9361; A.S.A. 1947, § 53-207.

15-72-211. Flambeau lights.

(a)(1) The use of natural gas for illuminating purposes in what are known as "flambeau" lights is a wasteful and extravagant use thereof and is dangerous to the public good, and it shall therefore be unlawful for any company, corporation, or person to use natural gas for illuminating purposes in what are known as flambeau lights in cities, towns, highways, or elsewhere.

(2) This shall not be construed as to prohibit the use of the gas in what are known as "jumbo" burners, enclosed in glass globes or lamps, or by the use of other burners of similar character so enclosed as will consume no more gas than jumbo burners.

(3) This shall not apply to those engaged in drilling wells while the well is being drilled.

(b) A violation of this section shall subject the person so violating it to the penalties and proceedings provided in § 15-72-202 (b), which is made applicable hereto.

History. Acts 1917, No. 166, § 11, p. 890; C. & M. Dig., § 7309; Pope's Dig., § 9365; A.S.A. 1947, § 53-210.

15-72-212. Failure to control wild wells.

(a) In order to protect the natural gas fields and oil fields in this state, it is declared to be unlawful for any person to negligently permit any gas or oil well to go wild or to get out of control.

(b) The owner of any wild well shall, after twenty-four (24) hours' written notice by the Oil and Gas Commission given to him or her or to the person in possession of the well, make reasonable effort to control such well.

(c) The commission shall have the right to take charge of the work of controlling any wild well and shall have the right to proceed through its own agents or by contract with a responsible contractor to control the well or otherwise to prevent the escape or loss of gas or oil from the well all at the reasonable expense of the owner of the well if the owner of the well fails within twenty-four (24) hours after service of the notice provided for in subsection (b) of this section to:

(1) Control the well if control could reasonably be achieved within the period; or

(2) Begin in good faith upon service of the notice operations to control the well; or

(3) Prosecute diligently such operations.

(d) In order to secure to the commission the payment of the reasonable cost and expense of controlling or plugging the well, the commission shall retain the possession of the well and shall be entitled to receive and retain the rents, revenues, and incomes therefrom until the costs and expense incurred by the commission shall be repaid. When all costs and expenses have been repaid, the commission shall restore possession of the well to the owner. However, in the event the income received by the commission shall not be sufficient to reimburse the commission as provided for in this section, the commission shall have a lien or privilege upon all of the property of the owner of the well, except property exempt by law. The commission shall then proceed to enforce the lien or privilege by suit brought in any court of competent jurisdiction the same as any other civil action and the judgment so obtained shall be executed in the same manner now provided by law for execution of judgments. Any excess over the amount due the commission which the property seized and sold may bring, after payment of court costs, shall be paid over to the owner of the well.

History. Acts 1939, No. 105, § 26;
A.S.A. 1947, § 53-126.

15-72-213. Surface owner's lien for damages caused by operator neglect.

Any surface owner who is damaged or threatened with damage by the neglect of the operator will have a lien upon the fixtures or equipment owned by the operator, with all oil, gas, and other hydrocarbons produced therefrom which may be run to the credit of the operator to secure payment for all damages that can be lawfully recovered under the terms of the oil and gas lease or leases covering the particular property and under which drilling operations are being undertaken by the operator. The lien shall also secure payment for any other damages

that the surface owner would be entitled to recover from the operator under the laws of the State of Arkansas.

History. Acts 1983, No. 902, § 4; A.S.A. 1947, § 53-219.

RESEARCH REFERENCES

Ark. L. Rev. Case Notes, Implied Covenant to Restore Surface, Etc., 41 Ark. L. Rev. 173.

15-72-214. Surface owner's claim for damages caused by operator neglect.

(a) Each operator shall remain liable under the proof of financial responsibility as filed with the Oil and Gas Commission until released by the Director of Production and Conservation.

(b) Any surface owner seeking to recover thereunder for damages caused by the neglect of the operator must file written notice of claim therefor with the commission within one (1) year of the date of issuance of the permit for such drilling operations. However, that claim shall be subordinate to the rights of the commission under the proof of financial responsibility to secure compliance by the operator with the provisions of §§ 15-71-101 — 15-71-112, 15-72-101 — 15-72-110, 15-72-205, 15-72-212, 15-72-216, 15-72-301 — 15-72-324, and 15-72-401 — 15-72-407, as amended, and the rules and regulations of the commission promulgated thereunder.

History. Acts 1985, No. 559, § 1; A.S.A. 1947, § 53-220.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Legislative Survey, Oil and Gas, 8 U. Ark. Little Rock L.J. 593.

15-72-215. [Repealed.]

Publisher's Notes. This section, concerning secondhand oil field equipment; filing inventory, was repealed by Acts 2007, No. 859 § 6. The section was de-

rived from Acts 1925, No. 132, §§ 1-3; Pope's Dig., §§ 3649-3651, 6078-6080; A.S.A. 1947, §§ 71-1401 — 71-1403.

15-72-216. Requirement that dry or abandoned wells be plugged — Notice of abandonment.

(a) Each abandoned well and each dry hole promptly shall be plugged in the manner and within the time required by regulations to be prescribed by the Oil and Gas Commission. The owner of the well

shall give notice upon a form the commission may prescribe of the drilling of each dry hole and of the owner's intention to abandon.

(b) No well shall be abandoned until the notice has been given and no fee shall be required to be paid with this notice.

History. Acts 1939, No. 105, § 25; 1979, No. 113, § 4; 1981, No. 523, § 6; A.S.A. 1947, § 53-125.

15-72-217. Plugging dry or abandoned well by lessee or operator.

(a) All lessees or operators drilling or operating for crude oil or natural gas within the State of Arkansas shall immediately, in a practical and workmanlike manner under the supervision of the oil or gas inspector, as provided in this section, plug all dry holes or abandoned oil or gas wells in accordance with Oil and Gas Commission plugging rules.

(b)(1) If after notice and a hearing the commission finds that a well drilled for the exploration, development, storage, or production of oil or gas, or as injection, salt water disposal, salt water source, brine injection or disposal has been abandoned, as defined by the commission, or is leaking salt water, oil, gas, or other deleterious substances into any fresh water formation or onto the surface of the land in the vicinity of the well, or creates an imminent danger to the health or safety of the public, the commission shall issue an order that the well be properly plugged, replugged, or repaired to remedy the situation.

(2)(A) If the well operator fails to obey the order within the time set by the order, the commission may:

(i) Authorize a person to enter upon the land on which the well is located and plug, replug, or repair the well, as may be reasonably required to remedy the condition; or

(ii)(a) Transfer the well, the well-site equipment, or any hydrocarbons from the well that are stored on the well site.

(b) "Well-site equipment" includes without limitation an associated tank battery and production facility equipment.

(B) Any proceeds received from the transfer of a well, well-site equipment, or hydrocarbons from the well under subdivision (b)(2)(A) of this section shall be deposited in the Abandoned and Orphaned Well Plugging Fund.

(3)(A) The costs and expenses incurred by the commission and paid with funds from the fund shall be a debt due by the well operator to the commission for reimbursement to the fund.

(B) The well owner's failure to comply with the commission's order to plug, replug, or repair the well or to repay expenses incurred by the commission to plug, replug, or repair the well is a violation of this chapter and subject to enforcement action or a cessation of operations.

(c) This section does not:

(1) Relieve any well operator otherwise legally responsible from any obligation to plug, replug, or repair a well; or

(2) Limit the authority of the commission to require the proper plugging, replugging, or repair of a well.

(d)(1) Any person who enters upon the land on which the well is located to plug, replug, or repair the well, or who supports or contributes to any such action in accordance with the order of the commission and under contract to the commission, shall not be liable for any damages resulting from operations reasonably necessary or proper to plug, replug, or repair the well, except for damages to growing crops and improvements.

(2) The person shall not be held to have assumed responsibility for future remedial work on the well or be liable in damages or otherwise for conditions subsequently arising from or in connection with the well.

History. Acts 1917, No. 166, § 3, p. 890; C. & M. Dig., § 7301; Pope's Dig., § 9357; A.S.A. 1947, § 53-203; Acts 2005, No. 1267, § 4; 2009, No. 1175, § 14.

Amendments. The 2005 amendment inserted the subsection (a) designation; in present (a), substituted "as provided in this section, plug all dry holes" for "as hereinafter provided, plug all dry" and "in accordance with Oil and Gas Commission plugging rules" for "in which oil-bearing

or gas-bearing strata have been found, in the following manner"; deleted former (1) and (2); and added present (b)-(d).

The 2009 amendment, in (b)(2), inserted (b)(2)(B), redesignated the remaining text of (b)(2) accordingly, substituted "the time set by the order" for "thirty (30) days after the date of order" in (b)(2)(A), and made related and minor stylistic changes.

15-72-218. Plugging dry or abandoned well by another.

Whenever any person is injured or threatened with injury by neglect to comply with the provisions of § 15-72-217, it shall be lawful for that person, after notice to the owner, lessee, or caretaker of the premises upon which the well is located, to:

(1) Enter upon the premises;

(2) Fill and plug the well in the manner provided in § 15-72-217; and

(3) Recover the expense thereof from the person, whose duty it was to fill up or plug the well in like manner. Debts of such amounts are recoverable, and the person shall have a lien upon the fixtures, machinery, and leasehold interest of the owner or operator of the well for all sums expended in filling and plugging the well, and for the costs of the suit, including a reasonable attorney's fee, to be fixed by the court.

History. Acts 1917, No. 166, § 4, p. 890; C. & M. Dig., § 7302; Pope's Dig., § 9358; A.S.A. 1947, § 53-204.

15-72-219. Compensation of surface owners and surface tenants for damages — Restoration of land.

(a) A surface owner or surface tenant is entitled to reasonable compensation where a spill of crude oil or produced water has occurred and has caused damages to real property, growing crops, trees, shrubs, fences, roads, structures, improvements, livestock, personal property or measurable damage to the productive capacity of the soil.

(b) In addition to any compensation or damages paid by the operator under subsection (a) of this section, the operator shall restore the damaged land in accordance with all applicable rules and regulations of the:

- (1) Arkansas Department of Environmental Quality; or
- (2) Oil and Gas Commission.

(c) Any rules or regulations adopted by the department or the commission pertaining to spills of crude oil or produced water shall:

(1) Provide, as nearly as practicable, for remediation of any spill of crude oil or produced water to the condition of the real property before the spill; and

(2) Specify a reasonable time frame for commencing and completing remediation of any spill of crude oil or produced water to the condition of the real property before the spill.

(d) If the party responsible for damage to real property caused by a spill of crude oil or produced water fails to restore the real property in accordance with applicable rules and regulations, then the surface owner or surface tenant may bring an action for restoration or remediation:

(1) In that action, if the surface owner or surface tenant proves by a preponderance of the evidence that the party responsible for the damage has failed to restore and remediate the real property, then the surface owner or surface tenant is entitled to an order requiring restoration or remediation to appropriate standards of the applicable agency; and

(2) In addition to the relief provided in subdivision (d)(1) of this section, the surface owner or surface tenant may be allowed a reasonable attorney's fee together with costs associated with maintaining an action for restoration or remediation.

(e) This section shall become effective on September 17, 2007, and will apply to spills of crude oil and spills of produced water that occur after that date.

(f) Nothing contained in this section is intended to limit or restrict the rights of any surface owner or surface tenant to maintain a cause of action for any damage to real property that is not addressed by the rules and regulations adopted by the department or the commission pertaining to spills of crude oil or produced water.

(g) Nothing contained in this section shall alter, affect, or modify the terms of any oil or gas lease pertaining to restoration or remediation of damaged real property that are more stringent than the provisions of this section.

(h) The provisions of this section are remedial in nature.

History. Acts 2007, No. 507, § 1; 2009, No. 481, § 8.

Amendments. The 2009 amendment rewrote (e), which read: "The provisions of this section shall only take effect upon the final adoption of rules and regulations

governing the remediation of spills of crude oil or produced water and are applicable to spills of crude oil and produced water that occur after the effective date thereof."

SUBCHAPTER 3 — POOLS AND DRILLING UNITS

SECTION.

- 15-72-301. Applicability of §§ 15-72-307 — 15-72-314.
- 15-72-302. Just and equitable shares — Preventing waste, avoiding risks, etc. — Drilling units.
- 15-72-303. Authority to integrate production in drilling units.
- 15-72-304. Integration orders generally.
- 15-72-305. Allocation of production and cost following integration order — Procedure.
- 15-72-306. Limitation on production if no integration.
- 15-72-307. Formation of units not in restraint of trade.
- 15-72-308. Petition for unit operation — Hearing.
- 15-72-309. Findings to support order requiring unit operation — Issuance.
- 15-72-310. Order requiring unit operation — Contents.
- 15-72-311. Obligation or liability of owners for expenses.
- 15-72-312. Operator's lien.
- 15-72-313. New unit operation order in pool established by previous order.

SECTION.

- 15-72-314. Unit area oil and gas — Product of tract.
- 15-72-315. Unitization of entire pool as one operating unit.
- 15-72-316. Salt water disposal unit operation of a pool — Petition.
- 15-72-317. Findings to support order requiring salt water disposal unit operation.
- 15-72-318. Order requiring salt water disposal unit operation — Contents.
- 15-72-319. Salt water disposal unit operation — Expenses.
- 15-72-320. Salt water disposal unit — Operator's lien.
- 15-72-321. Enlarged operation of salt water disposal unit established by previous order.
- 15-72-322. Oil and gas from salt water disposal unit — Product of tract.
- 15-72-323. Notice of public hearings.
- 15-72-324. Limitation on production.

Preambles. Acts 1985, No. 272 contained a preamble which read: "Whereas, it has been determined that certain inequities presently exist with respect to the disbursement and distribution of royalty proceeds to the parties entitled thereto with respect to gas produced and sold from wells within established drilling and production units; and

"Whereas, in order to resolve such inequities as presently exist and to prevent further inequities from subsequently arising it is necessary to provide for the distribution as royalty of one-eighth (1/8th) of

the net proceeds received from natural gas produced and sold to the persons or parties entitled thereto proportionate to their interest within each such established drilling and production unit for purposes of protecting the correlative rights of such parties and consistent with the declared public policy of this State...."

Acts 1985, No. 881 contained a preamble which read: "Whereas, the exploration for oil and gas as natural resources of the State of Arkansas is impaired in areas within which the production thereof in commercial quantities has not been estab-

lished because of the failure or refusal of parties having interests therein to participate within such proposed operations; and

"Whereas, the best interests of the State of Arkansas and the citizens thereof could be achieved by providing for the establishment of exploratory units for drilling and production of oil and gas and the integration of separately owned tracts embraced therein..."

Effective Dates. Acts 1951, No. 28 § 2: approved Jan. 30, 1951. Emergency clause provided: "Whereas, it has been ascertained by the General Assembly that the best interests of the State of Arkansas can be served by the enactment of this legislation, and that it is in the interest of the national defense that this act be immediately effective; and this act being necessary for the preservation of the public peace, health and safety of the State of Arkansas, an emergency is hereby declared and this act shall be in full force from and after its passage."

Acts 1965, No. 41, § 2: Feb. 8, 1965. Emergency clause provided: "It has been found and is declared by the General Assembly of the State of Arkansas that the public and private interests in the prevention of waste of oil and gas, the protection of the correlative rights of all owners and the increased ultimate recovery of oil and/or gas by integration of all tracts and interests in an entire pool, or part thereof, in appropriate cases are applicable to all common sources of supply in the State of Arkansas, regardless of when they were discovered; therefore, an emergency is declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall take effect and be in full force

from and after the date of its passage and approval."

Acts 1973, No. 22, § 3: approved Jan. 30, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the best interests of the State of Arkansas can be served by the enactment of this legislation, and that it is in the interest of the national defense that this act be immediately effective; and this act being necessary for the preservation of the public peace, health and safety of the State of Arkansas, an emergency is hereby declared and this act shall be in full force from and after its passage."

Acts 1985, No. 272, § 3: Mar. 6, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the best interests of the State of Arkansas and the citizens thereof can be served by the enactment of this legislation, and this Act being necessary for the protection of the correlative rights of all interested parties should be immediately effective. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 881, § 2: Apr. 15, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the best interests of the State of Arkansas can be served by the enactment of this legislation to promote the drilling of exploratory wells and the production of oil and gas as natural resources of the State of Arkansas, this Act should be immediately effective. An emergency is hereby declared and this Act shall be in full force from and after its passage and approval."

RESEARCH REFERENCES

Am. Jur. 38 Am. Jur. 2d, Oil & G., § 164 et seq.

Ark. L. Rev. Compulsory Unitization of Oil and Gas Pools, 5 Ark. L. Rev. 392.

Perry v. Nicor Exploration, Inc.: Split Stream Sales and Paying Quantities, 42 Ark. L. Rev. 155.

U. Ark. Little Rock L.J. Legislative Survey, Oil and Gas, 8 U. Ark. Little Rock L.J. 593.

Wright, The Arkansas Law of Oil and Gas, 9 U. Ark. Little Rock L.J. 223.

Wright, The Arkansas Law of Oil and Gas, 10 U. Ark. Little Rock L.J. 5.

CASE NOTES

ANALYSIS

Capture.
Compulsory Unitization.
Jurisdiction.
Termination of Units.

Capture.

The law of capture, although not completely nullified by this subchapter, does not apply in fact situations where the Commission's power to order unitization has actually been exercised. *Budd v. Ethyl Corp.*, 251 Ark. 639, 474 S.W.2d 411 (1971).

Compulsory Unitization.

This subchapter did not authorize compulsory unitization of an entire unit even when a substantial majority of interested parties agreed to that plan. *Dobson v. Arkansas Oil & Gas Comm'n*, 218 Ark. 160, 235 S.W.2d 33 (1950) (decision prior to 1951 amendment).

Where operators in part of an oil field incurred expense in installing equipment for reinjection of gas, other operators in the field could not be compelled to contribute to payment of this expense although the amount of their oil recovery was increased because of the increased pressure caused by such reinjection, because, prior to the 1951 amendment to this section field-wide unitization could be attained only by voluntary cooperation. *Dobson v. Arkansas Oil & Gas Comm'n*, 218 Ark. 160, 235 S.W.2d 33 (1950) (decision prior to 1951 amendment).

Jurisdiction.

The chancery court had jurisdiction of suit seeking a declaratory judgment that two oil fields, unitized on a field-wide basis by order of the commission, had terminated as units where nature of relief requested by plaintiffs and intervenors was in the main equitable in nature and where defendant-lessees waived any objection to chancery court jurisdiction by affirmatively seeking first an order cancelling the leases of intervenors as clouds on their title to the unit and then damages against plaintiffs and intervenors for disturbing defendants' peaceful possession of the unit. *Christmas v. Raley*, 260 Ark. 150, 539 S.W.2d 405 (1976).

Termination of Units.

In a suit seeking a declaratory judgment that two oil fields unitized on a field-wide basis by order of the oil and gas commission had terminated as units, where unrefuted testimony indicated little or no production of unitized substances from the unit for approximately five years, the chancery court did not err in finding that the units and the oil and gas leases upon which the units were created had terminated. *Christmas v. Raley*, 260 Ark. 150, 539 S.W.2d 405 (1976).

Cited: *Poindexter v. Lion Oil Ref. Co.*, 205 Ark. 978, 167 S.W.2d 492 (1943); *Bibler Bros. Timber Corp. v. Tojac Minerals, Inc.*, 281 Ark. 431, 664 S.W.2d 472 (1984); *Katter v. Arkansas La. Gas Co.*, 765 F.2d 730 (8th Cir. 1985).

15-72-301. Applicability of §§ 15-72-307 — 15-72-314.

The provisions of §§ 15-72-307 — 15-72-314 shall be applicable to each pool or any portion thereof in the State of Arkansas.

History. Acts 1939, No. 105, § 15; 1965, No. 41, § 1; A.S.A. 1947, § 53-115.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Well, Now, Ain't That Just Fugacious!: A Basic

Primer on Arkansas Oil and Gas Law, 29 U. Ark. Little Rock L. Rev. 211.

CASE NOTES

Cited: Fife v. Thompson, 288 Ark. 620, 708 S.W.2d 611 (1986).

15-72-302. Just and equitable shares — Preventing waste, avoiding risks, etc. — Drilling units.

(a) Whether or not the total production from a pool is limited or prorated, no rule, regulation, or order of the Oil and Gas Commission shall be such in terms or effect:

(1) That it shall be necessary at any time for the producer from or the owner of a tract of land in the pool, in order that he or she may obtain the tract's just and equitable share of the production of the pool, as the share is set forth in this section, to drill and operate any well or wells on the tract in addition to the well or wells as can without waste produce the share; or

(2) As to occasion net drainage from a tract unless there is drilled and operated upon the tract a well or wells in addition to the wells thereon as can without waste produce the tract's just and equitable share, as set forth in this section, of the production of the pool.

(b)(1) For the prevention of waste and to avoid the augmenting and accumulation of risks arising from the drilling of an excessive number of wells, after a hearing the commission shall establish a drilling unit or units for each pool except in those pools that, prior to February 20, 1939, have been developed to an extent and where conditions are such that it would be impracticable or unreasonable to use a drilling unit at the present stage of development.

(2)(A) As used in this subchapter, "drilling unit" means a single governmental section or the equivalent unless a larger or smaller area is requested by an owner, as defined in § 15-72-102, within the drilling unit to be established and a larger or smaller area is established by order of the commission. The drilling unit shall constitute a developed unit as long as a well is located thereon that is capable of producing oil or gas in paying quantities.

(B) The commission shall have the continuing authority to:

(i) Designate the number of wells that may be drilled and produced within a drilling unit; and

(ii) Regulate the spacing among multiple wells drilled and produced within a drilling unit.

(c)(1) Each well permitted to be drilled upon any drilling unit shall be drilled at a location that is in compliance with rules adopted by the commission, with such exception as may be reasonably necessary where it is shown, after notice and an opportunity for a hearing, and the commission finds that a well drilled at a different location is likely to prevent waste or protect correlative rights of owners within the unit, or both.

(2) Whenever an exception is granted, the commission shall take action to offset any advantage that the person securing the exception

may have over other producers by reason of drilling the well as an exception, and so that drainage from developed units to the tract with respect to which the exception is granted will be prevented or minimized and the producer of the well drilled as an exception will be allowed to produce no more than his or her just and equitable share of the oil and gas in the pool, as the share is set forth in this section.

(d)(1) Subject to the reasonable requirements for prevention of waste, a producer's just and equitable share of the oil and gas in the pool, also sometimes referred to as a tract's just and equitable share, is that part of the authorized production for the pool, whether it is the total that could be produced without any restriction on the amount of production or whether it is an amount less than that which the pool could produce if no restriction on amount were imposed, which is substantially in the proportion that the quantity of recoverable oil and gas in the developed area of the producer's tract in the pool bears to the recoverable oil and gas in the total developed area of the pool, insofar as these amounts can be practically ascertained.

(2) To that end, the rules, regulations, permits, and orders of the commission shall be such as will prevent or minimize reasonably avoidable net drainage from each developed unit, that is, drainage that is not equalized by counter drainage and will give to each producer the opportunity to use his or her just and equitable share of the reservoir energy.

(e)(1) After public hearing held pursuant to notice given as required by law and by any rules or orders of the commission, the commission may establish a drilling unit as defined in subsection (b) of this section for an exploratory well to be drilled therein.

(2) Any drilling unit so established shall be composed of a governmental section or the equivalent thereof unless a larger or smaller area is requested by an owner, as defined in § 15-72-102, within the drilling unit to be established and a larger or smaller area is established by order of the commission, determined by the commission to be prospective of oil or gas, or both. The commission shall have the authority to integrate separately owned tracts embraced therein when the owners thereof fail or refuse voluntarily to do so provided that persons who own at least an undivided fifty percent (50%) interest in the right to drill and produce oil or gas, or both, from the total proposed unit area agree thereto.

(3) However, any such order of the commission and drilling unit as established for exploratory purposes thereunder shall remain in force for a period no longer than the later of one (1) year following the effective date thereof or one (1) year following the cessation of drilling operations or production within the unit, whereupon the order of the commission and the provisions thereof shall automatically terminate.

History. Acts 1939, No. 105, § 14; Acts 2003, No. 964, § 1; 2009, No. 1175, 1941, No. 305, § 1; 1951, No. 28, § 1; § 15.
1985, No. 881, § 1; A.S.A. 1947, § 53-114; **Amendments.** The 2009 amendment

substituted "an opportunity for a" for "upon" in (c)(1).

CASE NOTES

ANALYSIS

Royalties.
Use of Surface.

Royalties.

For a discussion of apportionment of royalties, see *Dobson v. Arkansas Oil & Gas Comm'n*, 218 Ark. 160, 235 S.W.2d 33 (1950).

Use of Surface.

The owner of oil and gas rights in one tract of land may use the surface of that tract to gain access to an adjacent tract to drill on the adjacent tract. *Reimer v. Gulf Oil Corp.*, 281 Ark. 377, 664 S.W.2d 456 (1984).

Where the mineral owner's lease granted the mineral owner the express right to construct such roads as were necessary to drill for gas on the surface owner's lands and also provided that if the well site was within the same drilling unit as was the surface estate, the well would be considered as upon the surface owner's land, since the well was within the drilling unit, the mineral owner had an express right to cross the surface estate and could be liable only for unreasonable use. *Reimer v. Gulf Oil Corp.*, 281 Ark. 377, 664 S.W.2d 456 (1984).

Cited: *Arkla Exploration Co. v. Texas Oil & Gas Corp.*, 734 F.2d 347 (8th Cir. 1984).

15-72-303. Authority to integrate production in drilling units.

(a) When two (2) or more separately owned tracts are embraced within an established drilling unit, when there are separately owned interests in all or part of the drilling unit, or when there are separately owned tracts and separately owned interests in all or part of such a drilling unit, the owners thereof may voluntarily pool, combine, and integrate their tracts or interests for the development or operation of that drilling unit.

(b) When the owners fail or refuse voluntarily to integrate their interests, upon the application of any such owner or operator, the commission, for the prevention of waste or to avoid the drilling of unnecessary wells, shall enter its order integrating all tracts and interests in the drilling unit for the development or operation of the drilling unit and the sharing of production from the drilling unit.

History. Acts 1939, No. 105, § 15; 1963, No. 536, § 1; A.S.A. 1947, § 53-115; Acts 2005, No. 137, § 2.

Amendments. The 2005 amendment inserted "or operator" following "any such owner" in (b).

CASE NOTES

Cited: *Fife v. Thompson*, 288 Ark. 620, 708 S.W.2d 611 (1986).

15-72-304. Integration orders generally.

(a) All orders requiring integration shall be made after notice and hearing and shall be upon terms and conditions which are just and reasonable and which will afford the owner of each tract or interest in

the drilling unit the opportunity to recover or receive his or her just and equitable share of the oil and gas in the pool without unnecessary expense and will prevent or minimize reasonably avoidable drainage from each developed unit which is not equalized by counter drainage.

(b) In the event the drilling of a well has not been commenced or, if commenced, the well has not been completed as a well capable of producing oil and gas in commercial quantities on the lands comprising the drilling unit on the effective date of the order requiring integration, the order shall:

(1) Authorize the drilling or completion and the equipping and operation of a well on the drilling unit;

(2) Provide who shall drill, complete, and operate the well;

(3) Prescribe the time and manner in which all owners in the drilling unit who may desire to pay their share of the costs of such operations and participate therein may elect to do so;

(4) Provide that an owner who does not affirmatively elect to participate in the risk and cost of the operations shall transfer his or her rights in the drilling unit and the production from the unit well to the parties who elect to participate therein for a reasonable consideration and on a reasonable basis which shall be determined, in the absence of agreement between the parties, by the Oil and Gas Commission. The transfer may be either a permanent transfer or may be for a limited period pending recoupment out of the share of production attributable to the interest of the nonparticipating owner by the participating parties of an amount equal to the share of the costs that would have been borne by the nonparticipating party had he or she participated in the operations, plus an additional sum to be fixed by the commission.

(c) In the event there is a well capable of producing oil or gas in commercial quantities on the lands comprising the drilling unit on the effective date of the order requiring integration, the order shall:

(1) Authorize the operation of the well;

(2) Provide who shall operate the well; and

(3) Provide that within the time stipulated in the order any owner in the drilling unit who did not participate in the drilling of the well shall either reimburse the drilling parties in cash for his or her share of the actual cost of drilling, completing, and equipping the well or shall transfer his or her rights in such drilling unit and the production from the well to the drilling parties until those parties have received out of the share of production attributable to the interest so transferred an amount equal to the share of the costs that would have been borne by the transferring party had he or she participated in drilling, completing, equipping, and operating the well, plus an additional sum to be fixed by the commission.

(d) In the event there is an unleased mineral interest or interests in any drilling unit, the owner thereof shall be regarded as the owner of a royalty interest to the extent of a one-eighth ($\frac{1}{8}$) interest in and to the unleased mineral interest. This royalty interest shall not be affected by the provisions of subsections (b) and (c) of this section.

History. Acts 1939, No. 105, § 15; 1963, No. 536, § 1; A.S.A. 1947, § 53-115.

CASE NOTES

Cited: Fife v. Thompson, 288 Ark. 620, 708 S.W.2d 611 (1986).

15-72-305. Allocation of production and cost following integration order — Procedure.

(a)(1) The order of the Oil and Gas Commission creating a drilling unit shall provide that effective as of the commencement of the drilling of a well upon the drilling unit or, if a well capable of producing oil and gas in commercial quantities has already been completed upon some part of the lands included within the drilling unit, all royalty, overriding royalty, production payment, or similar interests in the drilling unit shall be integrated without the necessity of any additional order or action by the commission or owners. In the event any unit includes an unleased mineral interest upon the effective date thereof, one-eighth ($\frac{1}{8}$) of the unleased mineral interest shall be deemed as royalty for the purposes of this subsection.

(2) For the purpose of making distribution to the owners of royalty, overriding royalty, production payment, or similar interests, there shall be allocated to each tract in the established drilling unit that percentage of the total production from such drilling unit, except any part thereof unavoidably lost or used for production or development purposes, which the area of each tract bears to the total area of the drilling unit. The interests shall be paid or delivered to each owner thereof in conformance with the provisions of the appropriate lease, agreement, or contract creating it, but computed upon the production allocated to each tract as hereinabove provided, rather than upon the actual production therefrom.

(3) One-eighth ($\frac{1}{8}$) of all gas sold on or after the first day of the calendar month next ensuing after March 6, 1985, from any such unit shall be considered royalty gas, and the net proceeds received from the sale thereof shall be distributed to the owners of the marketable title in and to the leasehold royalty and royalty as defined under § 15-72-304(d). Marketability of title shall be determined according to principles of real property law governing title to oil and gas interests. Unless all royalty owners within the drilling unit agree to a different method for distribution of the royalty, the distribution shall be coordinated by the operator of the well as follows:

(A)(i) Within thirty (30) days of the receipt of the proceeds from gas sale, each working interest owner shall furnish to the working interest owner designated as operator, in a form acceptable to the operator, the following information:

(a) The names and addresses of all owners of royalty under the working interest owner's leasehold interests;

(b) Each royalty owner's tax identification or social security number and any other information needed to meet the requirements of the Internal Revenue Service or other governmental agencies; and

(c) The fractional or decimal interests in the unit of each tract in which interests are owned and each royalty owner's fractional or decimal interest therein;

(ii) Thereafter, each working interest owner shall notify the operator of any changes of ownership and provide the necessary information to facilitate the necessary changes promptly upon receiving proof thereof;

(iii) If any working interest owner should fail or refuse to discharge its obligation to provide the information outlined in subdivision (a)(3)(A)(i) in a timely manner, to facilitate payments, the operator may, at its option, either:

(a) Notify the working interest owner by certified or registered mail of the name, address, and decimal interests of the royalty owner believed to be entitled to receive payments pursuant to the terms hereof under the working interest owner's leasehold on the basis of the best information then available to the operator. If the working interest owner fails to respond to the notification within thirty (30) days of the receipt thereof, the operator shall be entitled to pay royalty moneys in accordance with its prior notification and usual procedures. Further, the operator's payment in this manner shall constitute a complete defense to any claim or in any legal proceeding or cause of action and the responsible working interest owner shall indemnify and hold the operator harmless from all liability and reimburse the operator for any and all costs and expenses, including attorney's fees, interest, or penalty incurred with respect to the proceeding or action; or

(b) File an application with the commission, setting forth sufficient facts to identify the well concerned and the responsible working interest owner, requesting that the commission issue an order requiring the working interest owner to appear at the next regularly scheduled hearing and show cause with respect to its failure to timely comply with the provisions of this section. Subsequent to the hearing, the commission shall impose upon a working interest owner who has failed to meet its obligations hereunder such sanctions as are reasonably calculated to enforce compliance with this section. These sanctions shall include, but not be limited to, a civil penalty of up to, but not more than, five hundred dollars (\$500). The commission shall have the authority to suspend the imposition of any sanction for a maximum period of sixty (60) days in order to allow the noncompliant owner the opportunity to furnish proof to the commission of his or her compliance with any commission order. All civil penalties levied by the commission as a result of this provision shall be collected by the commission and shall be deposited in the State Treasury to the credit of the Oil and Gas Commission Fund. The commission may promulgate such other rules and regulations as it deems appropriate and necessary to carry out the purposes of this section;

(iv) The terms of subdivision (a)(3)(A) of this section shall not be applicable to any producing unit or well that produces liquid hydrocarbons only, or liquid hydrocarbons associated with the production of gas, or gas produced associated with the production of liquid hydrocarbons;

(B)(i) Commencing no later than six (6) months after the date of first sale, and thereafter no later than the earlier of thirty (30) days after first payment is received or thirty (30) days after the sixty-day period within which the first purchaser is to make payment pursuant to §§ 15-74-501 and 15-74-601 — 15-74-603, or a total of ninety (90) days after the end of the calendar month within which subsequent production is sold, each working interest owner or marketing party who has sold gas shall remit or cause to be remitted to the operator one-eighth ($\frac{1}{8}$) of the revenue realized or royalty moneys from gas sales computed at the mouth of the well, less all lawful deductions, including, but not limited to, all federal and state taxes levied upon the production or proceeds and shall indemnify and hold the other working interest owner free from any liability therefor. However, if any portion of the price received by a marketing party is subject to possible refund to the gas purchaser pursuant to the regulations or orders of any governmental authority, the refundable portion need not be included in the amount remitted to the operator for distribution hereunder until the possibility of refund has terminated. The funds or amounts as so remitted shall be held in trust by the operator for the account of the royalty owner or owners entitled thereto until distributed and paid as provided in this section;

(ii) If any operator should fail or refuse to discharge its obligation to remit revenues in a timely manner as provided in this section, the working interest owner whose royalty owner's obligations have not been paid may, to facilitate payment, either:

(a) File an application with the commission, setting forth sufficient facts to identify the well concerned and the responsible operator, requesting that the commission issue an order requiring the operator to appear at the next regularly scheduled hearing and show cause with respect to its failure to timely comply with the provisions of this section. Subsequent to the hearing, the commission shall impose upon an operator who has failed to meet its obligations hereunder such sanctions as are reasonably calculated to enforce compliance with this section. The sanctions shall include, but not be limited to, a civil penalty of up to, but not more than, five hundred dollars (\$500). The commission shall have the authority to suspend the imposition of any sanction for a maximum period of sixty (60) days in order to allow the noncompliant the opportunity to furnish proof to the commission of his or her compliance with any commission order. All civil penalties levied by the commission as a result of this provision shall be collected by the commission and deposited in the State Treasury to the credit of the fund. The commission may promulgate such other rules and regulations as it deems appropriate and necessary to carry out the purposes of this section; or

(b) File a legal proceeding or cause of action to compel the operator's compliance with the terms hereof. The operator shall reimburse the complaining working interest owner for any and all costs or expenses, including attorney's fees, incurred with respect to the proceeding or action;

(iii) The operator shall not be held liable for failure to distribute royalty hereunder where its failure is due to the failure of a working interest owner to timely provide or cause to be provided the information and royalty moneys described in subdivisions (a)(3)(A) and (B) of this section. Each working interest owner shall indemnify and hold the operator harmless for all costs, including reasonable attorney's fees, incurred as a result of the failure;

(iv) The terms of subdivision (a)(3)(B) of this section shall not be applicable to any producing unit or well that produces liquid hydrocarbons only, or liquid hydrocarbons associated with the production of gas, or gas produced associated with the production of liquid hydrocarbons.

(4)(A) Any working interest owner may arrange for the royalty moneys to be remitted directly to the operator by the purchaser to whom the gas is sold but, in that case, shall continue to hold the operator harmless for all costs, including reasonable attorney's fees, incurred as a result of failure to provide or cause to be provided the information and royalty moneys required by subdivisions (a)(3)(A) and (B) of this section.

(B) The terms of subdivision (a)(4) of this section shall not be applicable to any producing unit or well that produces liquid hydrocarbons only, liquid hydrocarbons associated with the production of gas, or gas produced associated with the production of liquid hydrocarbons.

(5)(A) On or before the thirtieth day of the next calendar month following its receipt of the royalty moneys as provided above, the operator shall distribute the moneys to all royalty owners as provided in this subsection. The distribution may be made annually for the aggregate of up to twelve (12) months of accumulated royalty moneys where the aggregate amount due any royalty owner is one hundred dollars (\$100) or less. The payment shall be made in a form evidencing the following:

- (i) The name of the party entitled to payment;
- (ii) Identification of the wells for which payment is being made by well number or division order;
- (iii) The time period for which payment is made;
- (iv) The decimal interest of the party being paid;
- (v) The total production from each well for which payment is being made;
- (vi) The gross price received for each unit of production from each well;
- (vii) Any and all deductions from the payment which shall be itemized as to the nature of the deduction; and

(viii) An address and telephone number at which additional information may be obtained and questions may be answered.

(B) In the event that the operator stops the royalty payments for a period of more than sixty (60) days for any reason, the operator shall send a letter of explanation.

(C) If a royalty interest owner requests information or answers to questions concerning a payment made pursuant to this subdivision and the request is made by certified mail with return receipt requested, the party making payment must respond to the request by certified mail with return receipt requested not later than forty-five (45) days after the request is received.

(D)(i) If a royalty interest owner fails to receive an answer to his or her request for information or to his or her questions, the royalty interest owner may file a complaint with the commission on a form provided by the commission describing:

(a) The information requested or the questions to be answered;

(b) The party responsible for making the royalty payments;

(c) The date the information or answers were requested; and

(d) The date the requested information or answers were due from the paying party.

(ii) Upon the filing of the complaint form, the commission shall issue an order requiring the party making the payments to appear at the next regularly scheduled hearing and to show cause for its failure to respond to the royalty interest owner's request for information or answers.

(iii) If the party making the payments fails to respond to the royalty interest owner's inquiry after the complaint is filed or fails to show just cause for its failure to respond at the hearing, the commission shall impose such sanctions as are reasonably calculated to enforce compliance with this provision.

(iv) These sanctions shall include, but not be limited to, a civil penalty of up to, but not more than, five hundred dollars (\$500). The commission shall have the authority to suspend the imposition of any sanction for a maximum period of sixty (60) days in order to allow the noncompliant party the opportunity to furnish proof to the commission of his or her compliance with any commission order.

(v) All civil penalties levied by the commission as a result of this provision shall be collected by the commission and shall be deposited in the State Treasury to the credit of the fund.

(E) The commission may promulgate such other rules and regulations as it deems appropriate and necessary to carry out the purposes of this section.

(F) The terms of subdivision (a)(5) of this section shall not be applicable to any producing unit or well that produces liquid hydrocarbons only, liquid hydrocarbons associated with the production of gas, or gas produced associated with the production of liquid hydrocarbons.

(6)(A) Payment of one-eighth ($\frac{1}{8}$) of the revenue realized from the sale of gas as provided in this section shall fully discharge all

obligations of the operator and other working interest owners with respect to the payment of one-eighth ($\frac{1}{8}$) leasehold royalty or royalty as described under § 15-72-304(d).

(B) The terms of subdivision (a)(6) of this section shall not be applicable to any producing unit or well that produces liquid hydrocarbons only, liquid hydrocarbons associated with the production of gas, or gas produced associated with the production of liquid hydrocarbons.

(7)(A) The operator shall be entitled to reimbursement from each working interest owner, whether or not that party is marketing gas, the party's fair and equitable share of the costs of distributing the one-eighth ($\frac{1}{8}$) royalty required by this subsection. The amount of these charges shall be based upon the reasonable cost of administering these provisions and shall be subject to review by the commission upon application of any working interest owner.

(B) The terms of subdivision (a)(7) of this section shall not be applicable to any producing unit or well that produces liquid hydrocarbons only, liquid hydrocarbons associated with the production of gas, or gas produced associated with the production of liquid hydrocarbons.

(8)(A) Any gas taken in kind shall be excluded from royalty gas for which payment shall be made pursuant to this section, but the operator shall be promptly provided with written notification of the intent to exclude the gas.

(B) Additionally, any gas taken by a working interest owner to correct an imbalance in production between the working interest owners, which was created or existed prior to April 1, 1985, shall also be excluded from royalty gas for which payment shall be made pursuant to this subsection.

(C) Nothing contained in this section shall affect the obligations of working interest owners with respect to the payment of royalties, overriding royalties, production payments, or similar interests in excess of the one-eighth ($\frac{1}{8}$) royalty required to be distributed under this section.

(b) All operations, including, but not limited to, the commencement, drilling, or operation of a well upon any portion of a drilling unit for which an integration order has been entered shall be deemed for all purposes the conduct of operations upon each separately owned tract and interest in the drilling unit by the several owners thereof. The portion of the production allocated to the owner of each tract or interest included in a drilling unit formed by an integration order shall, when produced, be considered for all purposes as if it had been produced from the tract or interest by a well drilled thereon.

History. Acts 1939, No. 105, § 15; 1963, No. 536, § 1; 1985, No. 272, § 1; A.S.A. 1947, § 53-115; Acts 1987, No. 94, §§ 1, 4; 2009, No. 1175, § 16.

Publisher's Notes. Acts 1987, No. 94, § 1, provided, in part, that the operator or other working interest owner shall not be held liable for failure to make distribu-

tions in the manner set out in this section for a period of six months from and after July 20, 1987.

Amendments. The 2009 amendment

substituted "one hundred dollars (\$100)" for "twenty-five dollars (\$25.00)" in (a)(5)(A).

RESEARCH REFERENCES

Ark. L. Rev. Norvell, Pitfalls in Developing Lands Burdened by Non-Participating Royalty: Calculating the Royalty Share and Coexisting with the Duty Owed

to the Non-Participating Royalty Owner by the Executive Interest, 48 Ark. L. Rev. 933.

CASE NOTES

Cited: Fife v. Thompson, 288 Ark. 620, 708 S.W.2d 611 (1986); SEECO, Inc. v. Hales, 330 Ark. 402, 954 S.W.2d 234 (1997).

15-72-306. Limitation on production if no integration.

Should the owners of separate tracts embraced within a drilling unit fail to agree upon the integration of the tracts and the drilling of a well on the unit and should it be established that the commission is without authority to require integration as provided by §§ 15-72-303 — 15-72-305, then subject to all other applicable provisions of this act, the owner of each tract embraced within the drilling unit may drill on his or her tract. However, the allowable production from the tract shall be the proportion of the allowable for the full drilling unit as the area of the separately owned tract bears to the full drilling unit.

History. Acts 1939, No. 105, § 15; 112, 15-72-101 — 15-72-110, 15-72-205, A.S.A. 1947, § 53-115. 15-72-212, 15-72-216, 15-72-301 — 15-72-

Meaning of "this act". Acts 1939, No. 324, 15-72-401 — 15-72-407. 105, codified as §§ 15-71-101 — 15-71-

CASE NOTES

Cited: Fife v. Thompson, 288 Ark. 620, 708 S.W.2d 611 (1986).

15-72-307. Formation of units not in restraint of trade.

The formation of any drilling unit or salt water disposal unit as provided in this subchapter and the operation of that unit under order of the Oil and Gas Commission shall not be a violation of any statute of this state relating to trusts, monopolies, contracts, or combinations in restraint of trade.

History. Acts 1939, No. 105, § 15; 1951, No. 134, § 1; 1957, No. 401, § 1; 1965, No. 41, § 1; A.S.A. 1947, § 53-115.

CASE NOTES

Cited: Fife v. Thompson, 288 Ark. 620, 708 S.W.2d 611 (1986).

15-72-308. Petition for unit operation — Hearing.

(a) Upon the filing of a petition as provided in this section, the Oil and Gas Commission after notice shall hold a public hearing to consider the need for the operation as a unit of an entire pool or any portion thereof to prevent waste, to increase ultimate recovery of oil and gas, and to protect correlative rights.

(b) The petition shall contain the following:

(1) A description of the proposed unit area;

(2) A statement of the nature of the proposed unit operation; and

(3) A conformed copy of the proposed unit operating agreement, which may be a composite of executed counterparts of the agreement.

(c) The petition may be filed by one (1) or more persons authorized in the unit operating agreement to file it with the commission.

History. Acts 1939, No. 105, § 15; 1951, No. 134, § 1; A.S.A. 1947, § 53-115.

CASE NOTES

Cited: Fife v. Thompson, 288 Ark. 620, 708 S.W.2d 611 (1986).

15-72-309. Findings to support order requiring unit operation — Issuance.

(a) If after hearing and considering the petition and evidence offered in support thereof the Oil and Gas Commission makes the following findings, it shall issue an order requiring unit operation in accordance with the terms of the proposed unit operating agreement:

(1) The proposed unit agreement has, or counterparts thereof have, been executed by persons who at the time of filing of the petition owned of record legal title to at least an undivided seventy-five percent (75%) interest in the right to drill into and produce oil or gas from the total proposed unit area and by persons who at that time owned of record legal title to seventy-five percent (75%) of royalty and overriding royalty payable with respect to oil or gas produced from the entire unit area;

(2) Unit operation of the pool or any portion thereof proposed to be unitized is reasonably necessary to prevent waste, to increase ultimate recovery of oil or gas, and to protect correlative rights; and

(3) The value of the additional oil or gas to be recovered from the proposed unit area as a result of the proposed unit operation will exceed the additional cost incident to conducting the operation.

(b) Thereafter, the order and the provisions of the unit operating agreement shall be effective as to and binding upon each person owning

an interest in the unit area or in oil or gas produced therefrom or the proceeds thereof.

(c) With respect to an interest which is encumbered of record with a mortgage or deed of trust both the grantor and grantee therein shall for the purposes of subdivision (a)(1) of this section be considered as the record owner of legal title thereto. However, when the instrument gives the grantor in the mortgage or deed of trust the right to execute the unit agreement, the grantor shall for that purpose be deemed the record owner.

History. Acts 1939, No. 105, § 15;
1951, No. 134, § 1; A.S.A. 1947, § 53-115.

CASE NOTES

Cited: Fife v. Thompson, 288 Ark. 620,
708 S.W.2d 611 (1986).

15-72-310. Order requiring unit operation — Contents.

The order requiring unit operation shall be fair and reasonable under all circumstances and shall include:

- (1) A description of the unit area;
- (2) An allocation upon the basis agreed upon by the provisions of the unit operating agreement to each separately owned tract that for all purposes of this section and §§ 15-72-308, 15-72-309, and 15-72-311 — 15-72-322 may be a previously established drilling unit if the unit operating agreement so provides in the unit area its fair share of all of the oil and gas produced from the unit area and not required or consumed in the conduct of the operation of the unit area or unavoidably lost. No allocation formula shall be adopted by the Oil and Gas Commission and put into effect unless it is based on the relative contribution to the unit operation, other than physical equipment, made by each separately owned tract or previously established drilling unit;
- (3) A provision for the credits and charges to be made in the adjustment among the owners of the unit area for their respective investments in wells, tanks, pumps, machinery, materials, and equipment contributed to the unit operation. The net amount charged against the owner or owners of a separately owned tract shall be considered expenses of unit operation chargeable against the tract;
- (4) A provision that a part of the expenses of unit operation, including capital investments, be charged to each separately owned tract in the same proportion that the tract shares in the unit production. The expenses chargeable to a tract shall be paid by the person or persons who in the absence of unit operation would be responsible for the expense of developing and operating the tract;
- (5) The time at which the unit operation shall commence; and
- (6) Those additional provisions, not in conflict with or inconsistent with the unit operating agreement, which the commission determines

to be appropriate for the prevention of waste and the protection of all interested parties.

History. Acts 1939, No. 105, § 15; 1951, No. 134, § 1; 1973, No. 22, § 1; A.S.A. 1947, § 53-115.

CASE NOTES

Cited: Fife v. Thompson, 288 Ark. 620, 708 S.W.2d 611 (1986); Williams v. Arkansas Oil & Gas Comm'n, 307 Ark. 99, 817 S.W.2d 863 (1991).

15-72-311. Obligation or liability of owners for expenses.

The obligation or liability of each owner in the several separately owned tracts for the payment of unit expenses shall at all times be several and not joint or collective. In no event shall an owner of the oil or gas rights in the separately owned tract be chargeable with, obligated, or directly or indirectly liable for more than the amount apportioned, assessed, or otherwise charged to his or her interest in such separately owned tract pursuant to the plan of unitization.

History. Acts 1939, No. 105, § 15; 1951, No. 134, § 1; A.S.A. 1947, § 53-115.

CASE NOTES

Cited: Fife v. Thompson, 288 Ark. 620, 708 S.W.2d 611 (1986).

15-72-312. Operator's lien.

(a) The operator may have a lien on all of the property owned by each owner within the unit area to secure the payment of his or her proportionate part of the expenses of unit operation.

(b) The lien may be established by filing an affidavit with the circuit clerk of the county in which the property involved or any part thereof is located. This affidavit shall set forth an itemized statement of the amount due and the interest of the owner in the unit and may be enforced in the manner as now provided for the enforcement of laborers' liens.

History. Acts 1939, No. 105, § 15; 1951, No. 134, § 1; A.S.A. 1947, § 53-115. **Cross References.** Laborers' Liens Generally, § 18-43-101 et seq.

CASE NOTES

Cited: Fife v. Thompson, 288 Ark. 620, 708 S.W.2d 611 (1986).

15-72-313. New unit operation order in pool established by previous order.

(a) The Oil and Gas Commission, upon the filing of a petition in a form complying with the requirements of § 15-72-308, may after notice and hearing require unit operation of a pool or portion thereof when the unit area newly established embraces a unit area within the same pool established by a previous order of the commission.

(b) In each case the petition shall be accompanied by a copy of the proposed unit operating agreement with respect to the operation of the unit as so enlarged in the form meeting the requirements of § 15-72-308(b)(3).

(c) In each instance the unit operating agreement shall be executed by persons owning interests in oil and gas in the entire unitized area so enlarged in sufficient numbers to comply with the requirements of § 15-72-309(a)(1). However, if the unit operating agreement then in effect with respect to the unit area to which an additional portion of a pool is to be added contains provisions under the terms of which additions to the unit area may be made, the application for enlargement of the unitized area need only be accompanied by an agreement executed by persons owning interests in oil and gas under the area to be added to the unit area in numbers sufficient to comply with the requirements of § 15-72-309(a)(1), for the inclusion, in accordance with the plan provided in the unit operating agreement involved, of the additional area to the unit area then existing.

(d) In either case, the new order, in providing for allocation of unit production from the enlarged unit area, shall first treat the unit area previously established as a single tract. The portion of unit production so allocated thereto shall then be allocated among the separately owned tracts included in the previously established unit area in the same proportion as those specified therefor in the previous order. In no event shall the new order alter the relative values of tract factors of the previously established unit area, except by consent of all parties owning interests in the tract affected.

(e) An order of the commission entered under this section shall be effective as to the enlarged unit area and to all persons owning interest in oil and gas therein to the same extent as an order entered under § 15-72-309. It shall contain provisions with respect to the enlarged unit area to meet the requirements of § 15-72-310, and the provisions of §§ 15-72-311 and 15-72-312 shall be applicable to obligations incurred in the operation of the enlarged unit area.

History. Acts 1939, No. 105, § 15; 1951, No. 134, § 1; A.S.A. 1947, § 53-115.

CASE NOTES**Additions to Pool.**

Where the evidence clearly shows that a unitized pool adjoining the property in

question is draining large amounts of oil and gas from that property, upon the application of the working interests and the

royalty interests in such area, the property in question should be added to that of the existing pool without the working interests and royalty interests in the previously existing pool joining in the applica-

tion. *Cornelius v. Arkansas Oil & Gas Comm'n*, 240 Ark. 791, 402 S.W.2d 402 (1966).

Cited: *Fife v. Thompson*, 288 Ark. 620, 708 S.W.2d 611 (1986).

15-72-314. Unit area oil and gas — Product of tract.

The portion of oil or gas produced from the unit area and allocated to a separately owned tract shall be deemed, for all purposes, to have been actually produced from the tract. Operations for the production of oil or gas from any part of the unit area, conducted pursuant to the order of the Oil and Gas Commission, shall be deemed, for all purposes, to be operations for the production of oil or gas from each separately owned tract in the unit area.

History. Acts 1939, No. 105, § 15; 1951, No. 134, § 1; A.S.A. 1947, § 53-115.

CASE NOTES

Cited: *Fife v. Thompson*, 288 Ark. 620, 708 S.W.2d 611 (1986).

15-72-315. Unitization of entire pool as one operating unit.

(a) Where the Oil and Gas Commission has received a proper petition praying an order for the operation of an entire pool as a unit and after proper hearing and evidence has issued its order unitizing the pool, then the following procedure may be instituted by one (1) or more persons authorized in the unit operating agreement to file with it a petition praying for an order setting up a salt water disposal unit within the production unit of the entire pool.

(b) The unitization of the entire pool as an operating unit must be ordered by the commission as a condition precedent before the petition praying a salt water disposal unit may be filed.

History. Acts 1939, No. 105, § 15; 1951, No. 134, § 1; 1957, No. 401, § 1; A.S.A. 1947, § 53-115.

CASE NOTES

Cited: *Fife v. Thompson*, 288 Ark. 620, 708 S.W.2d 611 (1986).

15-72-316. Salt water disposal unit operation of a pool — Petition.

(a) Upon the filing of a petition as hereinafter provided, the Oil and Gas Commission after notice shall hold a public hearing to consider the need to establish a salt water disposal unit for an entire pool.

(b) The petition shall contain the following:

- (1) A description of the proposed unit area;
 - (2) A statement of the nature of the proposed salt water disposal unit operation; and
 - (3) A conformed copy of the proposed salt water disposal unit operating agreement which may be a composite of executed counterparts of the agreement.
- (c) The petition may be filed by one (1) or more persons authorized in the salt water disposal unit agreement to file it with the commission.

History. Acts 1939, No. 105, § 15;
1951, No. 134, § 1; 1957, No. 401, § 1;
A.S.A. 1947, § 53-115.

CASE NOTES

Cited: Fife v. Thompson, 288 Ark. 620,
708 S.W.2d 611 (1986).

15-72-317. Findings to support order requiring salt water disposal unit operation.

(a) If, after hearing and considering the petition and evidence offered in support thereof, the Oil and Gas Commission makes the following findings, it shall issue an order requiring salt water disposal unit operation in accordance with the terms of the proposed unit operating agreement:

(1) The proposed salt water disposal unit agreement has, or counterparts thereof have, been executed by persons who at the time of filing of the petition, owned of record legal title to at least an undivided seventy-five percent (75%) interest in the right to drill into and produce oil and gas from the total proposed unit area and by persons who at that time, owned of record legal title to seventy-five percent (75%) of royalty and overriding royalty payable with respect to oil and gas produced from the entire unit area;

(2) Salt water disposal unit operation of the pool proposed to be unitized is reasonably necessary to prevent waste, to increase ultimate recovery of oil or gas, and to protect correlative rights; and

(3) The value of the additional oil and gas to be recovered from the proposed unit area as a result of the proposed salt water disposal unit operation will exceed the additional cost incident to conducting the operation.

(b) The order and the provisions of the salt water disposal unit operating agreement shall, thereafter, be effective as to and binding upon each person owning an interest in the unit area, or in oil or gas produced therefrom or the proceeds thereof.

(c) With respect to an interest which is encumbered of record with a mortgage or deed of trust, both the grantor and grantee therein shall, for the purposes of subdivision (a)(1) of this section be considered as the record owner of legal title thereto. However, when the instrument gives the grantor in mortgage or deed of trust the right to execute such a unit

agreement, the grantor shall for this purpose be deemed the record owner.

History. Acts 1939, No. 105, § 15; 1951, No. 134, § 1; 1957, No. 401, § 1; A.S.A. 1947, § 53-115.

CASE NOTES

Cited: Fife v. Thompson, 288 Ark. 620, 708 S.W.2d 611 (1986).

15-72-318. Order requiring salt water disposal unit operation — Contents.

The order requiring salt water disposal unit operation shall be fair and reasonable under all circumstances and shall include:

- (1) A description of the salt water disposal unit area;
- (2) An allocation, whereby the portion of production allocated to the owner of each tract included in the unit operating agreement shall be a basis for such charges to be made against each tract for the disposal of salt water produced by the operation of the unit as a whole and shall be considered as expenses of unit operation for the disposal of salt water;
- (3) The time at which the salt water disposal unit operation shall commence; and
- (4) Those additional provisions, not in conflict with or inconsistent with the salt water disposal unit operating agreement, which the Oil and Gas Commission determines to be appropriate for the prevention of waste, water pollution, and the protection of all interested parties.

History. Acts 1939, No. 105, § 15; 1951, No. 134, § 1; 1957, No. 401, § 1; 1973, No. 22, § 1; A.S.A. 1947, § 53-115.

CASE NOTES

Cited: Fife v. Thompson, 288 Ark. 620, 708 S.W.2d 611 (1986).

15-72-319. Salt water disposal unit operation — Expenses.

The obligation or liability of each owner in the several separately owned tracts for the payment of salt water disposal unit expense shall at all times be several and not joint or collective. In no event shall an owner of the oil and gas rights in the separately owned tract be chargeable with, obligated, or directly or indirectly liable for more than the amount apportioned, assessed, or otherwise charged to his or her interest in the separately owned tract pursuant to the plan of unitization.

History. Acts 1939, No. 105, § 15; 1951, No. 134, § 1; 1957, No. 401, § 1; A.S.A. 1947, § 53-115.

CASE NOTES

Cited: Fife v. Thompson, 288 Ark. 620, 708 S.W.2d 611 (1986).

15-72-320. Salt water disposal unit — Operator's lien.

(a) The operator may have a lien on all of the property owned by each owner within the salt water disposal unit area to secure the payment of his or her proportionate part of the expenses of salt water disposal unit operation.

(b) The lien may be established by filing an affidavit with the circuit clerk of the county in which the property involved, or any part thereof, is located. This affidavit shall set forth an itemized statement of the amount due and the interest of the owner in the unit and may be enforced in the manner as now provided for the enforcement of laborers' liens.

History. Acts 1939, No. 105, § 15; 1951, No. 134, § 1; 1957, No. 401, § 1; A.S.A. 1947, § 53-115.

CASE NOTES

Cited: Fife v. Thompson, 288 Ark. 620, 708 S.W.2d 611 (1986).

15-72-321. Enlarged operation of salt water disposal unit established by previous order.

(a) The Oil and Gas Commission, upon the filing of a petition in a form complying with the requirements of § 15-72-316, may, after notice and hearing, require salt water disposal unit operation of a pool.

(b) In each case, the petition shall be accompanied by a copy of the proposed salt water disposal unit operating agreement with respect to the operation of the unit as so enlarged, in the form meeting the requirements of § 15-72-316(b)(3).

(c) In each instance, the unit operating agreement shall be executed by persons owning interests in oil and gas in the entire unitized area so enlarged in sufficient numbers to comply with the requirements of § 15-72-317(a)(1). However, if the unit operating agreement then in effect with respect to the unit area to which an additional portion of a pool is to be added contains provisions under the terms of which additions to the unit area may be made, the application for enlargement of the unitized area need only be accompanied by an agreement, executed by persons owning interests in oil and gas under the area to be added to the unit area in numbers sufficient to comply with the requirements of § 15-72-317(a)(1), for the inclusion, in accordance with

the plan provided in the unit operating agreement involved, of the additional area to the unit area then existing.

(d) In either case, the new order, in providing for allocation of unit production from the enlarged unit area, shall first treat the unit area previously established as a single tract. The portion of unit production so allocated thereto shall then be allocated among the separately owned tracts included in the previously established unit area in the same proportion as those specified therefor in the previous order. In no event shall the new order alter the relative values of tract factors of the previously established unit area, except by consent of all parties owning interests in the tract affected.

(e) An order of the commission entered under this section shall be effective as to the enlarged salt water disposal unit area and to all persons owning interest in oil and gas therein to the same extent as an order entered under § 15-72-317, and it shall contain provisions with respect to the enlarged unit area to meet the requirements of § 15-72-318. The provisions of §§ 15-72-319 and 15-72-320 shall be applicable to obligations incurred in the operation of the enlarged salt water disposal unit area.

History. Acts 1939, No. 105, § 15; 1951, No. 134, § 1; 1957, No. 401, § 1; A.S.A. 1947, § 53-115.

CASE NOTES

Cited: Fife v. Thompson, 288 Ark. 620, 708 S.W.2d 611 (1986).

15-72-322. Oil and gas from salt water disposal unit — Product of tract.

The portion of oil and gas produced from the salt water disposal unit and allocated to a separately owned tract shall be deemed, for all purposes, to have been actually produced from the tract. Operations for the production of oil and gas from any part of the unit area, conducted pursuant to the order of the Oil and Gas Commission, shall be deemed, for all purposes, to be operations for the production of oil and gas from each separately owned tract in the unit area.

History. Acts 1939, No. 105, § 15; 1951, No. 134, § 1; 1957, No. 401, § 1; A.S.A. 1947, § 53-115.

CASE NOTES

Cited: Fife v. Thompson, 288 Ark. 620, 708 S.W.2d 611 (1986).

15-72-323. Notice of public hearings.

In addition to other notice required by any rule or order of the commission, notice of public hearings before the Oil and Gas Commission as provided for in this subchapter shall be given as follows:

(1) When an application is filed with the commission pursuant to this subchapter, the commission shall give notice of the public hearing to be held upon such application by one (1) publication at least ten (10) days prior to the date of the hearing, but not more than thirty (30) days prior thereto, in a legal newspaper having a general circulation in the county, or in each county, if there shall be more than one (1), in which the lands embraced within the application are situated, except that, as to any public hearing pertaining to a matter of general application throughout the State of Arkansas, the notice shall be published in a legal newspaper having statewide circulation; and

(2) The cost of publication shall be taxed as a cost of the public hearing and shall be paid for by the applicant therein.

History. Acts 1939, No. 105, § 15;
1971, No. 351, § 1; A.S.A. 1947, § 53-115.

CASE NOTES

Cited: *Fife v. Thompson*, 288 Ark. 620, 708 S.W.2d 611 (1986); *Atlanta Exploration, Inc. v. Ethyl Corp.*, 301 Ark. 331, 784 S.W.2d 150 (1990).

15-72-324. Limitation on production.

(a) Whenever the Oil and Gas Commission limits the total amount of oil or gas which may be produced in this state, the limit so fixed shall not be less than the aggregate of the allowables fixed for each separate pool in this state for the prevention of waste in accordance with the foregoing definition of waste, plus the production from unrestricted pools. It shall allocate or distribute the allowable so fixed among the separate pools. The allocation or distribution among the pools of the state shall be made on a reasonable basis, giving to each pool with small wells of settled production an allowable production which will not accelerate or encourage a general premature abandonment of the wells in the pool.

(b) Whenever the commission limits the total amount of oil or gas which may be produced in any pool in this state to an amount less than that amount which the pool could produce if no restriction were imposed, which limitation may be imposed either incidentally to, or without, a limitation of the total amount of oil or gas which may be produced in the state, the commission shall prorate or distribute the allowable production among the producers in the pool on a reasonable basis so as to prevent or minimize reasonably avoidable drainage from each developed unit which is not equalized by counterdrainage and so that each producer will have the opportunity to produce or receive his

or her just and equitable share, as above set forth, subject to the reasonable requirements for the prevention of waste.

(c) After the effective date of any rule, regulation, or order of the commission fixing the allowable production of oil or gas, or both, for any pool, no person shall produce from any well, lease, or property more than the allowable production which is applicable, nor shall such amount be produced in a different manner than that which may be authorized.

History. Acts 1939, No. 105, § 16;
A.S.A. 1947, § 53-116.

SUBCHAPTER 4 — ILLEGAL OIL AND GAS

SECTION.

15-72-401. Prohibition on dealing in illegal oil and gas.

15-72-402. Finding oil and gas to be contraband — Bringing action for seizure and sale.

15-72-403. Summons.

SECTION.

15-72-404. Order of seizure.

15-72-405. Conservator.

15-72-406. Sale — Application of proceeds.

15-72-407. Other causes of action.

Cross References. Attachment and garnishment, § 16-110-101 et seq.

15-72-401. Prohibition on dealing in illegal oil and gas.

(a) The sale, purchase, or acquisition or the transportation, refining, processing, or handling in any other way of illegal oil, illegal gas, or illegal product is prohibited.

(b)(1) Unless and until the Oil and Gas Commission provides for certificates of clearance or tenders, or some other method, so that any person may have an opportunity to determine whether any contemplated transaction of sale, purchase, or acquisition or of transportation, refining, processing, or handling in any other way involves illegal oil, illegal gas, or illegal product, no penalty shall be imposed for the sale, purchase, or acquisition or the transportation, refining, processing, or handling in any other way of illegal oil, illegal gas, or illegal product, except under circumstances hereinafter stated.

(2) Penalties shall be imposed for the commission of each transaction prohibited in this section when the person committing the transaction knows that illegal oil, illegal gas, or illegal product is involved in the transaction or when the person could have known or determined the fact by the exercise of reasonable diligence or from facts within his or her knowledge. However, regardless of lack of actual notice or knowledge, penalties as provided in this act shall apply to any sale, purchase, or acquisition and to the transportation, refining, processing, or han-

dling in any other way of illegal oil, illegal gas, or illegal product where administrative provision is made for identifying the character of the commodity as to its legality.

(3) It shall likewise be a violation for which penalties shall be imposed for any person to sell, purchase, or acquire or to transport, refine, process, or handle in any other way any oil, gas, or any product without complying with any rule, regulation, or order of the commission relating thereto.

History. Acts 1939, No. 105, § 23; 112, 15-72-101 — 15-72-110, 15-72-205, A.S.A. 1947, § 53-123. 15-72-212, 15-72-216, 15-72-301 — 15-72-

Meaning of "this act". Acts 1939, No. 324, 15-72-401 — 15-72-407.
105, codified as §§ 15-71-101 — 15-71-

15-72-402. Finding oil and gas to be contraband — Bringing action for seizure and sale.

(a)(1) Apart from, and in addition to, any other remedy or procedure which may be available to the Oil and Gas Commission, or any penalty which may be sought against or imposed upon any person with respect to violations relating to illegal oil, illegal gas, or illegal product, all illegal oil, illegal gas, and illegal product shall, except under such circumstances as are stated herein, be contraband and shall be seized and sold, and the proceeds applied as provided in § 15-72-406.

(2) Sale shall not take place unless the circuit court shall find, in the proceeding provided for in this subchapter, that the commodity involved is contraband.

(b)(1) Whenever the commission believes that illegal oil, illegal gas, or illegal product is subject to seizure and sale, as provided in this subchapter, it shall, through its attorney or the Attorney General, bring a civil action in rem for that purpose in the circuit court of the county where the commodity is found, or the action may be maintained in connection with any suit or cross-action for injunction or for penalty relating to any prohibited transaction involving the illegal oil, illegal gas, or illegal product.

(2) Any interested person who may show himself or herself to be adversely affected by the seizure and sale shall have the right to intervene in the suit to protect his or her rights.

(3) This action referred to shall be strictly in rem and shall proceed in the name of the state as plaintiff against the illegal oil, illegal gas, or illegal product mentioned in the complaint, as defendant. No bond shall be required of the plaintiff in connection therewith.

History. Acts 1939, No. 105, § 24; A.S.A. 1947, § 53-124.

15-72-403. Summons.

(a) Upon the filing of the complaint, the clerk of the court shall issue a summons directed to the sheriff of the county, or to other officers or persons the court may authorize to serve process, requiring them to summon any and all persons, without undertaking to name them, who may be interested in the illegal oil, illegal gas, or illegal product mentioned in the complaint to appear and answer within thirty (30) days after the issuance and service of the summons.

(b) The summons shall contain the style and number of the suit and a very brief statement of the nature of the cause of action.

(c) Notice shall be served by posting one (1) copy at the courthouse door of the county where the commodity involved in the suit is alleged to be located and by posting another copy near the place where the commodity is alleged to be located.

(d) One (1) copy of the summons shall be posted at least five (5) days before the return day stated therein, and the posting of the copy shall constitute constructive possession of the commodity by the state.

(e) A copy of the summons shall also be published once each week for four (4) weeks in some newspaper published in the county where the suit is pending and having a bona fide circulation therein.

(f) No judgment shall be pronounced by any circuit court condemning the commodity as contraband until after the lapse of five (5) days from the last publication of the summons. Proof of service of the summons, and the manner thereof, shall be provided by general law.

History. Acts 1939, No. 105, § 24;
A.S.A. 1947, § 53-124.

15-72-404. Order of seizure.

(a) Where it appears by a verified pleading on the part of the plaintiff, by affidavit, or by oral testimony that grounds for the seizure and sale exist, the clerk, in addition to the summons or warning order, shall issue an order of seizure. This order shall be signed by the clerk and bear the seal of the court.

(b) The order of seizure shall specifically describe the illegal oil, illegal gas, or illegal product, so that it may be identified with reasonable certainty.

(c) The order shall direct the sheriff to whom it is addressed to take into his or her custody, actual or constructive, the illegal oil, illegal gas, or illegal product, described therein, and to hold the same subject to the orders of the court.

(d) The order of seizure shall be executed as a writ of attachment is executed.

(e) No bond shall be required before the issuance of the order of seizure, and the sheriff shall be responsible upon his or her official bond for the proper execution thereof.

History. Acts 1939, No. 105, § 24;
A.S.A. 1947, § 53-124.

15-72-405. Conservator.

In a proper case, the circuit court may direct the sheriff to deliver the custody of any illegal oil, illegal gas, or illegal product seized by him or her under an order of seizure, to a conservator to be appointed by the court, which conservator shall act as the agent of the court and shall give bond with an approved surety as the court may direct, conditioned that the conservator will faithfully conserve any illegal oil, illegal gas, or illegal product which may come into his or her custody and possession in accordance with the orders of the court. However, the court may in its discretion appoint any member of the commission or any agent of the commission as the conservator.

History. Acts 1939, No. 105, § 24;
A.S.A. 1947, § 53-124.

15-72-406. Sale — Application of proceeds.

(a)(1) Sales of illegal oil, illegal gas, or illegal product seized under the authority of this act, and notices of those sales, shall be in accordance with the laws of this state relating to the sale and disposition of attached property.

(2) However, where the property is in the custody of a conservator, the sale shall be held by the conservator and not by the sheriff.

(3) For his or her services hereunder, the conservator shall receive a reasonable fee to be paid out of the proceeds of the sale, to be fixed by the court ordering the sale.

(b) The court may order that the commodity be sold in specified lots or portions, and at specified intervals, instead of being sold at one time.

(c) Title to the amount sold shall pass as of the date of the act which is found by the court to make the commodity contraband.

(d) The judgment shall provide for payment of the proceeds of the sale into the Oil and Gas Commission Fund, after first deducting the costs in connection with the proceedings and the sale.

(e) The amount sold shall be treated as legal oil, legal gas, or legal product, as the case may be, in the hands of the purchaser, but the purchaser and the commodity shall be subject to all applicable laws, and rules, regulations, and orders with respect to further sale or purchase or acquisition, and with respect to the transportation, refining, processing, or handling in any other way, of the commodity purchased.

(f) No oil, gas, or illegal product shall be sold for less than the average market value at the time of sale of similar products of like grade and character.

History. Acts 1939, No. 105, § 24;
A.S.A. 1947, § 53-124.

Meaning of "this act". See note to
§ 15-72-401.

15-72-407. Other causes of action.

Nothing in this subchapter shall deny or abridge any cause of action a royalty owner, a lien holder, or any other claimant may have because of the forfeiture of the illegal oil, illegal gas, or illegal product, against the person whose act resulted in the forfeiture.

History. Acts 1939, No. 105, § 24; A.S.A. 1947, § 53-124.

SUBCHAPTER 5 — SECONDARY RECOVERY

SECTION.

15-72-501. Definitions.

15-72-502. Investigation and research — Personnel.

15-72-503. Submission of findings to landowners.

SECTION.

15-72-504. Agreements to use secondary recovery methods not in restraint of trade.

Preambles. Acts 1943, No. 302 contained a preamble which read: "Whereas, since the year 1923 there has been paid into the Conservation Fund of the State Treasury fees for the drilling and abandonment of oil and gas wells in this state; and

"Whereas, Act 105 of the Fifty-Second Arkansas General Assembly does prevent the expenditure of any moneys in the Conservation Fund of the State Treasury in the prevention of waste and the fostering, encouragement and providing of conservation of crude oil and natural gas, and the protection of the vested, co-equal or correlative rights of owners of crude oil and natural gas in those common sources of supply of crude oil and natural gas discovered prior to January 1, 1937; and

"Whereas, the Interstate Oil Compact Commission, composed of legal representatives from the States of Arkansas, Colorado, Illinois, Kansas, Kentucky, Louisiana, Michigan, New Mexico, New York, Oklahoma, Pennsylvania, and Texas, did find at their meeting in Lexington, Kentucky, June 19-20, 1942:

"(1) That there are 1,236 secondary recovery projects in 254 fields with 50,636 producing wells and 34,956 injection wells, representing a minimum proven reserve of 1,355,000,000 barrels, with a plant investment of \$ 281,496,000 in these states.

"(2) Approval of a legal committee report recommending state legislation pro-

viding for maximum application of secondary recovery operations, repressuring, pressure maintenance, recycling and cycling, with protection from state and federal anti-trust acts.

"(3) Recommendation that collection of data for secondary recovery operations should start as soon as a field is discovered, and findings that success of many operations can be predetermined by physical tests and accurate well records; and that large savings in materials and greater ultimate recovery may be obtained through secondary recovery operations; and

"Whereas, since the findings of the Interstate Oil Compact Commission were published in their Quarterly Bulletin of July, 1942, the American Petroleum Institute did publish during this same month factual data and information on the production of petroleum in the United States by secondary-recovery methods in a volume titled 'Secondary Recovery of Oil in the United States,' wherein it is evident that oil fields located in the States of New York, Pennsylvania, West Virginia, Ohio, Kentucky, Illinois, Michigan, Kansas, Oklahoma, Louisiana and Texas (of comparable character to oil fields producing in the state of Arkansas) are successfully and economically increasing their ultimate recovery; and

"Whereas, the Petroleum Administrator for War, the National Petroleum Regula-

tory Conference, the Independent Petroleum Association of America, et al., have warned that the discovery of new reserves of crude oil and gas-condensate so vitally necessary to meet the civilian and military needs for petroleum products in this time of war is on the wane and that it is now absolutely essential that every case where it is possible, advanced operating practice must be substituted not only for the use of critical materials but for the bringing about of the ultimate in recovery from oil and condensate pools now producing; and

"Whereas, it is recognized that substantial quantities of oil may be recovered by secondary-recovery methods in certain oil fields of Arkansas, however, information is entirely lacking on the possibilities of secondary recovery in those oil fields discovered prior to January 1, 1937;

"Therefore...."

Effective Dates. Acts 1943, No. 302, § 7: approved Mar. 23, 1943. Emergency clause provided: "There exists a National Emergency, and the effective prosecution of war requires the immediate increased uses of vast quantities of steel and other critical materials, and it is imperative that the production of petroleum be conducted under circumstances and conditions which will assure a maximum recovery of petroleum and associated hydrocarbons, and which will not involve a waste and inefficient use of the limited quantities of critical materials available for petroleum production.

"Therefore, this act being necessary for the immediate preservation of the public peace, health, and safety, an emergency is hereby declared, and this act shall take effect and be in force from and after its passage."

RESEARCH REFERENCES

ALR. Rights and obligations, with respect to adjoining landowners, arising out of secondary recovery of gas, oil, and other fluid minerals. 19 A.L.R.4th 1182.

Am. Jur. 38 Am. Jur. 2d, Oil & G., § 163.

15-72-501. Definitions.

(a) As used in this subchapter, unless the context otherwise requires:

(1) "Cycling" means an operation in which condensate-bearing gas is displaced from a gas zone by injection of dry gas; and

(2) "Gas condensate" means the liquid produced by the condensation of a vapor or gas either after it leaves the reservoir or while still in the reservoir. Condensate is often called distillate, drips, white oil, etc.

(3)(A) "Gas drive" means the process wherein energy for the recovery of oil is derived from gas under pressure in the formation. There may be:

(i) An injected gas drive; or

(ii) A gas-cap drive, which is the displacement of oil by the growth or expansion of a gas zone in an oil reservoir; or

(iii) A solution-gas drive, which is the displacement of oil by the expansion of the gas dissolved in it, depending upon the source of the compressed gas.

(B) In this manner, gas drive may apply to either primary or secondary recovery;

(4) "Gas injection" means the introduction of any gas into a subsurface reservoir;

(5) "Pressure maintenance" means a primary recovery or secondary recovery operation so conducted as to afford some degree of control over reservoir-pressure decline. This is preferably accomplished by gas injection in the early life of a pool;

(6) "Primary recovery" means the oil, gas, or oil and gas, recovered by natural flow, artificial lift, or any other method that may be employed to produce them through a single well bore, and the fluid enters the well bore by the action of native reservoir energy, or gravity;

(7) "Recycling" means a continuous reinjection of produced gas;

(8) "Repressuring" means the introduction of fluid, either gas or liquid, into a producing formation for the purpose of increasing the reservoir pressure;

(9) "Secondary recovery" means the oil, gas, or oil and gas recovered by any artificial flowing, pumping, or any other method that may be employed to produce them through the joint use of two (2) or more well bores. Secondary recovery is generally recognized as being that recovery which may be obtained by the injection of liquids or gases into the reservoir for the purpose of augmenting reservoir energy. Usually, but not necessarily, this is done after the primary recovery phase has passed;

(10) "Water drive" means any process whereby energy for the recovery of oil is derived principally from the movement of water in the formation. The water may be either native or introduced artificially into the formation;

(11) "Water flooding" means the introduction of water into an oil-bearing formation for the purpose of increasing the oil recovery, i.e., a secondary recovery operation employing water injection;

(12) "Water injection" means the introduction of water into a subsurface reservoir;

(b) In addition, the definitions found in § 15-72-102 shall also apply.

History. Acts 1943, No. 302, § 1; A.S.A. 1947, § 53-127.

15-72-502. Investigation and research — Personnel.

The Oil and Gas Commission is authorized and directed to make investigations and to research, as in the judgment of the commission is appropriate, to ascertain the advisability of the employment of a secondary recovery method or methods in any pool within the State of Arkansas containing oil and gas, and to this end is authorized to employ the personnel who in its judgment are necessary for the performance of the work.

History. Acts 1943, No. 302, § 2; A.S.A. 1947, § 53-128.

15-72-503. Submission of findings to landowners.

The findings of the Oil and Gas Commission are to be printed and submitted to the landowners, royalty owners, producers, and all parties in interest, in any oil or gas-condensate field or pool, or part thereof, where the employment of secondary recovery methods is found to be advisable.

History. Acts 1943, No. 302, § 3; A.S.A. 1947, § 53-129.

15-72-504. Agreements to use secondary recovery methods not in restraint of trade.

If the persons owning and operating any oil pool or portion thereof enter into an agreement among themselves for the employment of any secondary recovery method or methods for the production of oil from a pool or portion thereof, and the Oil and Gas Commission finds that operating the pool or portion thereof in accordance with the agreement will result in the prevention of waste, the performance of the agreement by the persons shall not be a violation of any statute of this state relating to trusts, monopolies, or contracts, or combinations in restraint of trade.

History. Acts 1943, No. 302, § 4; A.S.A. 1947, § 53-130.

SUBCHAPTER 6 — UNDERGROUND STORAGE OF GAS

SECTION.	SECTION.
15-72-601. Title.	15-72-605. Prerequisite to eminent domain — Certificate.
15-72-602. Definitions.	15-72-606. Petition for eminent domain — Subsequent proceedings.
15-72-603. Public interest and welfare — Authority of commission.	15-72-607. Ownership of gas.
15-72-604. Condemnation of subsurface strata or formations — Limitations.	15-72-608. Rules and regulations.

RESEARCH REFERENCES

Am. Jur. 38 Am. Jur. 2d, Oil & G., § 151.

15-72-601. Title.

This subchapter shall be known and may be cited as the “Underground Storage of Gas Law”.

History. Acts 1957, No. 82, § 1; A.S.A. 1947, § 53-901.

15-72-602. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Commission" means the Oil and Gas Commission.

(2) "Native gas" means gas which has not been previously withdrawn from the earth;

(3) "Natural gas" means gas either while in its original state or after the gas has been processed by removal therefrom of component parts not essential to its use for light and fuel;

(4) "Natural gas public utility" means any person, firm, or corporation authorized to do business in this state and engaged in the business of producing, transporting, or distributing natural gas by means of pipelines into, within, or through this state for ultimate public consumption; and

(5) "Underground storage" means storage in a subsurface stratum or formation of the earth;

History. Acts 1957, No. 82, § 2; A.S.A. 1947, § 53-902.

15-72-603. Public interest and welfare — Authority of commission.

(a) The underground storage of natural gas which promotes conservation thereof, which permits the building of reserves for orderly withdrawal in periods of peak demand, which makes more readily available and economical our natural gas resources to the domestic, commercial, and industrial consumers of this state, and which provides a better year-round market to the various gas fields, and promotes the public interest and welfare of this state.

(b) Therefore, in the manner hereinafter provided, the Oil and Gas Commission may find and determine that the underground storage of natural gas as hereinbefore defined is in the public interest.

History. Acts 1957, No. 82, § 3; A.S.A. 1947, § 53-903.

15-72-604. Condemnation of subsurface strata or formations — Limitations.

(a) Any natural gas public utility may condemn for its use for the underground storage of natural gas any subsurface stratum or formation in any land which the Oil and Gas Commission shall have found to be suitable and in the public interest for the underground storage of natural gas and, in connection therewith, may condemn other interests in property as required to adequately examine, prepare, maintain, and operate the underground natural gas storage facilities. However, the

right of condemnation of underground sands, formations, and strata granted hereby shall be limited as follows:

(1) If the commission affirmatively finds, based upon substantial evidence, that any sand, formation, or stratum is producing or is capable of producing oil, in paying quantities, through any known recovery method, then the sand, formation, or stratum shall not be subject to appropriation hereunder;

(2) No gas-bearing sand, formation, or stratum shall be subject to appropriation hereunder, unless the sand, formation, or stratum has a greater value or utility as a gas storage reservoir for the purpose of insuring an adequate supply of natural gas for any particular class or group of consumers of natural gas, or for the conservation of natural gas, than for the production of relatively small volumes of natural gas which remain therein. However, for as long as oil is produced in paying quantities in the secondary operations, no gas-bearing sand, formation, or stratum shall be condemned under the terms of this subchapter when the gas therein is being used for the secondary recovery of oil unless gas in a necessary and required amount is furnished to the operator or operators of the secondary recovery operations for the recovery of oil at the same cost as that at which the gas was being produced at the time of condemnation by the operator of the secondary recovery project or projects;

(3) Only the area of the underground sand, formation, or stratum as may reasonably be expected to be penetrated by gas displaced or injected into the underground gas storage reservoir may be appropriated hereunder; and

(4) No rights or interests in existing underground gas reservoirs being used for the injection, storage, and withdrawal of natural gas and owned or operated by others than the condemner shall be subject to appropriation hereunder.

(b) The right of condemnation granted in this section shall be without prejudice to the rights of the owner of the lands, or of other rights or interests therein, to drill or bore through the underground stratum or formation so appropriated in a manner as shall comply with orders, rules, and regulations of the commission issued for the purpose of protecting underground storage strata or formations against pollution and against the escape of natural gas therefrom and shall be without prejudice to the rights of the owner of the lands or other rights or interests therein as to all other uses.

History. Acts 1957, No. 82, § 4; A.S.A. 1947, § 53-904.

15-72-605. Prerequisite to eminent domain — Certificate.

Any natural gas public utility desiring to exercise the right of eminent domain as to any property for use for underground storage of natural gas, as a condition precedent to the filing of its petition in the

circuit court, shall obtain from the Oil and Gas Commission a certificate setting out findings of the commission as to the following:

(1) That the underground stratum or formation sought to be acquired is suitable for the underground storage of natural gas and that its use for such purposes is in the public interest; and

(2) The amount of recoverable oil and native gas, if any, remaining therein. However, the commission shall issue no certificate until after public hearing is had on the application, pursuant to notice served in compliance with notice in civil actions in the circuit court, together with notice published at least once each week for two (2) successive weeks in some newspaper of general circulation in the county or counties where the gas is proposed to be stored. The first publication of the notice must be at least ten (10) days prior to the date of the hearing.

History. Acts 1957, No. 82, § 5; A.S.A. 1947, § 53-905.

15-72-606. Petition for eminent domain — Subsequent proceedings.

(a) Any natural gas public utility having first obtained a certificate from the Oil and Gas Commission as provided in § 15-72-605 desiring to exercise the right of eminent domain for the purpose of acquiring property for the underground storage of natural gas shall do so in the manner provided in this section.

(b) The natural gas public utility shall present to the circuit court of the county wherein the land is situated, or to the judge thereof, a petition setting forth the purpose for which the property is sought to be acquired, a description of the property sought to be appropriated, and the names of the owners thereof as shown by the records of the county.

(c) The petitioner shall file the certificate of the commission as a part of its petition and no order by the court granting the petition shall be entered without the certificate being filed therewith.

(d) The court or the judge thereof shall examine the petition and determine whether the property is necessary to its lawful purposes, and if found in the affirmative, the finding shall be entered of record and subsequent proceedings shall follow the procedure by law for the exercise of the right of eminent domain for rights-of-way for railroads as provided by § 18-15-1201 et seq.

History. Acts 1957, No. 82, § 6; A.S.A. 1947, § 53-906.

15-72-607. Ownership of gas.

All natural gas which has been reduced to possession and which is subsequently injected into underground storage fields, sands, reservoirs, and facilities shall at all times be deemed the property of the injector, his or her heirs, successors, or assigns. In no event shall the gas be subject to the right of the owner of the surface of the lands or the

owner of any mineral interest therein under which the gas storage fields, sands, reservoirs, and facilities lie or subject to the right of any person, other than the injector, his or her heirs, successors, and assigns, to produce, take, reduce to possession, waste, or otherwise interfere with or exercise any control thereover. However, the injector, his or her heirs, successors, and assigns shall have no right to gas in any stratum, or portion thereof, which has not been condemned under the provisions of this subchapter or otherwise purchased.

History. Acts 1957, No. 82, § 7; A.S.A. 1947, § 53-907.

15-72-608. Rules and regulations.

(a) The Oil and Gas Commission shall have authority to make reasonable rules and regulations and exercise such powers as are granted to it by the Conservation Act, §§ 15-71-101 — 15-71-112, 15-72-101 — 15-72-110, 15-72-205, 15-72-212, 15-72-216, 15-72-301 — 15-72-324, and 15-72-401 — 15-72-407, as may be necessary in the administration of this subchapter.

(b) The Director of the Department of Finance and Administration shall have authority to make reasonable rules and regulations for the collection of the taxes and allowance of credit as provided in this subchapter.

History. Acts 1957, No. 258, § 8; A.S.A. 1947, § 53-137.

SUBCHAPTER 7 — EXPLORATION

SECTION.

15-72-701. Definitions.

15-72-702. Bonus for discovery of oil pool.

15-72-703. Application for permit to drill discovery well.

SECTION.

15-72-704. Approval of application.

15-72-705. Certificate of discovery of commercial pool.

15-72-706. Credit against severance tax.

Publisher's Notes. Acts 1957, No. 258, § 1, provided that in light of the Suez Canal incident, increasing costs involved in exploration for new sources of oil, the increasing demand for oil and its products, the relationship of oil to the continued prosperity of the state and nation, the

importance of oil to the over-all economy of the state and nation and to national security that this subchapter was enacted for the purpose of stimulating the flow of money into the search and exploration for new sources of oil within the boundaries of Arkansas.

15-72-701. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Commercial oil pool" means a pool which appears to contain sufficient quantities of recoverable oil, in the opinion of the commission, to justify the economical development thereof.

(2) "Commission" means the Oil and Gas Commission;

(3) "Conservation Act" means §§ 15-71-101 — 15-71-112, 15-72-101 — 15-72-110, 15-72-205, 15-72-212, 15-72-216, 15-72-301 — 15-72-324, and 15-72-401 — 15-72-407; and

(4) "Field" means the general area which is underlaid or appears to be underlaid by at least one (1) pool. "Field" includes the underground reservoir or reservoirs containing crude petroleum oil, natural gas, or both. The words "field" and "pool" mean the same thing when only one (1) underground reservoir is involved. However, "field", unlike "pool", may relate to two (2) or more pools;

(5) "Oil" means crude petroleum oil, and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the reservoir;

(6) "Owner" means the person who has the right to drill and produce oil and to appropriate the production either for himself or herself or for himself or herself and another or others;

(7) "Participating area" means the land surface area within a radius of two (2) miles from the discovery well;

(8) "Person" means any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or the heirs, successors, or assigns of any of the foregoing;

(9) "Pool" means an underground reservoir containing a common accumulation of crude petroleum oil or natural gas, or both. Each zone of a general structure which is completely separated from any other zone in the structure is covered by the term "pool" as used herein;

History. Acts 1957, No. 258, § 2; A.S.A. 1947, § 53-131.

15-72-702. Bonus for discovery of oil pool.

Any person who discovers a commercial oil pool in this state not heretofore discovered shall be entitled to the bonus herein provided upon compliance with the provisions hereof.

History. Acts 1957, No. 258, § 3; A.S.A. 1947, § 53-132.

15-72-703. Application for permit to drill discovery well.

To become entitled to the benefits provided in this subchapter, a person shall make application therefor to the Oil and Gas Commission at or before the issuance of the permit to drill the discovery well in the pool upon a form approved by the commission in which the applicant shall, among other things, state under oath:

- (1) The location of the proposed discovery well; and
- (2) A legal description of the land within the participating area as to which the applicant is the owner at that date.

History. Acts 1957, No. 258, § 4; A.S.A. 1947, § 53-133.

15-72-704. Approval of application.

The application shall be approved by the Oil and Gas Commission if it determines from the application and such investigation as it may deem proper:

- (1) That the location of the proposed discovery well is not within the geographical confines of a known producing oil field; and
- (2) That the application has complied with the provisions of this subchapter and all rules and regulations of the commission in respect thereto.

History. Acts 1957, No. 258, § 5; A.S.A. 1947, § 53-134.

15-72-705. Certificate of discovery of commercial pool.

Upon receipt by the commission, within one (1) year from the date of the approval of the application, of evidence from which the Oil and Gas Commission finds that a commercial oil pool has been discovered by that person in the drilling of the discovery well and that compliance has been had with this subchapter and the rules and regulations of the commission, it shall issue to that person a certificate to that effect. This certificate shall entitle the person to the benefits of this subchapter. However, not more than one (1) certificate shall be issued for each field, nor more than one (1) pool in any field.

History. Acts 1957, No. 258, § 6; A.S.A. 1947, § 53-135.

15-72-706. Credit against severance tax.

From and after the effective date of the certificate, the person shall be entitled to receive from the Revenue Division of the Department of Finance and Administration a credit against the taxes thereafter otherwise due by the person on account of oil produced from the pool from wells located on any land as to which the person was the owner, and so designated, in the application filed with the Oil and Gas Commission, as follows:

- (1) Seventy-five percent (75%) of the severance tax otherwise due during a period of five (5) years from the date of the certificate if the pool is located above the base of the deepest producing oil formation in the county where the discovery well is located at the date of the application;
- (2) Seventy-five percent (75%) of the severance tax otherwise due during a period of ten (10) years from the date of the certificate if the

pool is located below the base of the deepest producing oil formation in the county or if there was no oil production in the county at the date of the application; and

(3) The certificate shall designate whether the person named therein is entitled thereunder to the benefits of subdivisions (1) and (2) of this section, and the name of the field and pool covered thereby.

History. Acts 1957, No. 258, § 7; A.S.A. 1947, § 53-136.

CASE NOTES

Beneficiaries.

The tax credit allowed against the severance tax by this subchapter and § 15-72-608 is for the benefit of the oil producer

only and is not for the proportionate benefit of the royalty owner. *P & O Falco, Inc. v. Riley*, 271 Ark. 562, 610 S.W.2d 255 (1980).

SUBCHAPTER 8 — EMERGENCY PETROLEUM SET-ASIDE ACT

SECTION.

- 15-72-801. Policy and purpose.
- 15-72-802. Definitions.
- 15-72-803. Penalties.
- 15-72-804. Establishment of state emergency petroleum set-aside — General provisions.

SECTION.

- 15-72-805. Confidential treatment.

15-72-801. Policy and purpose.

The General Assembly finds and declares that:

(1) Adequate supplies of petroleum products are essential to the health, welfare, and safety of the people of the State of Arkansas;

(2) Any severe disruption in the supply of petroleum products for use within the state would cause grave hardship and pose a threat to the health and economic well-being of the people of this state;

(3) The state set-aside program has benefited all sectors of Arkansas' economy by allocating petroleum products on a short-term basis to those persons experiencing hardship or emergency conditions caused by insufficient supplies of fuel; and

(4) It is in the public interest for Arkansas to continue to administer a state set-aside program during those times that federal law does not preempt such a state-authorized program. A set-aside program should be an emergency standby, established as a preparedness measure. It should not operate on a permanent basis or in a period of normal supply.

History. Acts 1983, No. 377, § 1; A.S.A. 1947, § 53-1501.

15-72-802. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Assignment" means an action taken by the Arkansas Energy Office, designating that a prime supplier of petroleum products supply them to an authorized consumer, wholesale purchaser-consumer, or wholesale purchaser-reseller to facilitate relief of emergency or hardship needs, pursuant to § 15-72-804;

(2) "Broker" means a marketer of petroleum products who performs none of the basic marketing functions but normally brings buyer and seller together and receives a fee or commission for his or her services;

(3) "Consumer" means any individual, trustee, agency, partnership, association, corporation, company, municipality, political subdivision, or other legal entity which purchases petroleum products for ultimate consumption in Arkansas;

(4) "Director" means the Director of the Arkansas Energy Office;

(5) "Firm" means any association, company, corporation, estate, individual, joint venture, partnership, or sole proprietorship or any entity however organized, including charitable or educational institutions and the federal government, including federal corporations, departments, and agencies and state and local governments;

(6) "Petroleum products" means propane, motor gasoline, blended fuels, kerosene, #2 heating oil, diesel fuel, kerosene-base jet fuel, naphtha-base jet fuel, and aviation gasoline;

(7) "Prime supplier" means the supplier which makes the first sale of any petroleum product subject to the state set-aside into the state distribution system for consumption within the state. Notwithstanding the above, "prime supplier" shall not include any firm, or any part or subsidiary of any firm which supplies, sells, transfers, or otherwise furnishes any allocated product exclusively to utilities for generation of electric energy;

(8) "Purchaser" means a wholesale purchaser or consumer, or both;

(9) "Set-aside" means, with respect to a particular prime supplier, the amount of a petroleum product which is made available from the total supply of a prime supplier, pursuant to the provisions of § 15-72-804, for utilization by the Arkansas Energy Office to resolve emergencies and hardships due to shortages or other dislocations in petroleum products distribution systems; and

(10)(A) "Supplier" means any firm or any part or subsidiary of any firm, other than the United States Department of Defense, which supplies, sells, transfers, or otherwise furnishes any allocated product to wholesale purchasers or end-users, including, but not limited to, refiners, importers, resellers, brokers, jobbers, and retailers.

(B) Notwithstanding subdivision (10)(A) of this section, "supplier" shall not include any firm, or any part or subsidiary of any firm which supplies, sells, transfers, or otherwise furnishes any allocated product exclusively to utilities for generation of electric energy.

History. Acts 1983, No. 377, § 2; A.S.A. 1947, § 53-1502; Acts 2007, No. 554, §§ 1, 2.

Amendments. The 2007 amendment substituted “charitable or educational in-

stitutions” for “charitable, educational, or eleemosynary institutions” in (5); substituted “blended fuels” for “gasohol” in (6); and deleted former (11) through (14).

15-72-803. Penalties.

(a) Any person who knowingly violates any provisions of this subchapter or any rules promulgated thereunder shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than one thousand dollars (\$1,000) or imprisonment for not more than six (6) months, or both. In the event of a violation by a corporation or other entity organized for a common business purpose, this penalty shall extend to any officer, director, or employee who knowingly participated in the violation.

(b) Any prime supplier or broker who refuses to provide products pursuant to an assignment under this subchapter shall be liable for a penalty of not more than ten thousand dollars (\$10,000) which may be recovered in a civil action, and the prime supplier or broker may be enjoined from continuing such violation.

History. Acts 1983, No. 377, § 5; A.S.A. 1947, § 53-1505.

15-72-804. Establishment of state emergency petroleum set-aside — General provisions.

(a)(1) The Director of the Arkansas Energy Office shall promulgate rules in accordance with the Arkansas Administrative Procedure Act, as amended, § 25-15-201 et seq., establishing a set-aside system for petroleum products and reporting requirements for prime suppliers and brokers.

(2) The rules shall direct prime suppliers and brokers to set aside a percentage of petroleum products that are delivered to suppliers in the state for the Arkansas Energy Office to distribute to meet emergency and hardship needs.

(b) The set-aside system established pursuant to this section shall not be implemented unless:

(1) The federal government terminates, suspends, or fails to implement a national set-aside program;

(2) The Governor finds that a set-aside system is necessary to manage an energy shortage within the state which threatens the continuation of services by emergency vehicles, essential industry, and agricultural end-users; and

(3) The Governor directs the office to implement all or a portion of the set-aside program necessary to prevent and alleviate any energy hardships or shortages.

(c) Upon adoption of the rules authorized under subsection (a) of this section, the director shall notify each prime supplier and broker of the

set-aside percentage applicable to each product subject to the set-aside program.

(d)(1) The director shall establish as part of the rules adopted under subsection (a) of this section procedures governing applications for assignment and assignments by the office under the state set-aside system.

(2) The procedures shall:

(A) Include criteria for approving and disapproving applications and identifying priority users and an appeals process; and

(B) Require the director to take into account whether any assignment under the state set-aside program is likely to create an undue economic burden or other hardship for the prime supplier or broker involved.

(e) Each prime supplier and broker shall designate a representative to act for and in behalf of the prime supplier or broker with respect to the state set-aside program. Each prime supplier and broker shall notify in writing the office of that designation.

(f) The release of the set-aside shall be as follows:

(1) On or before the fifteenth day of the month, the director may order the release of part or all of the prime supplier's or broker's set-aside volume through the prime supplier's or broker's normal distribution system in the state;

(2) From time to time, the director may designate certain geographical areas within the state as suffering from an intrastate supply imbalance. At any time during the month, the director may order some or all of the prime suppliers and brokers with purchasers within these geographical areas to release part or all of their set-aside volume through their normal distribution systems to increase the allocations of all the supplier's and broker's purchasers located within these areas; and

(3) Orders issued pursuant to this section shall be in writing and effective immediately upon presentation to the prime supplier's or broker's designated regional manager or equivalent person. The orders shall represent a call on the prime supplier's or broker's set-aside volumes for the month of issuance irrespective of the fact that delivery cannot be made until the following month.

(g) The set-aside program shall remain in effect no longer than a one hundred twenty-day period. The Governor may extend the program an additional thirty (30) days if necessary to manage an energy shortage. In the event that the Governor finds that the set-aside system is no longer necessary to manage an energy shortage, the Governor shall terminate the program.

History. Acts 1983, No. 377, § 3; A.S.A. 1947, § 53-1503; Acts 2007, No. 554, § 3.

Amendments. The 2007 amendment inserted the (a)(1) designation; in (a)(1), substituted "Director of the Arkansas Energy Office" for "director" and added "pe-

troleum products and reporting requirements for prime suppliers and brokers"; inserted the (a)(2) designation and rewrote (a)(2); substituted "all or a portion" for "the portion" in (b)(3); deleted former (d) and (e) and redesignated the remain-

ing subsections accordingly; added the (d)(1) and the (d)(2) and (d)(2)(A) and (B) designations; inserted “and” following “applications” in (d)(2)(A); substituted “Require” for “The procedures shall also

require” in (d)(2)(B); substituted “regional manager or equivalent person” for “state representative” in (f)(3); and made related changes.

15-72-805. Confidential treatment.

(a) Information furnished pursuant to this subchapter and designated as confidential shall be maintained as confidential by the Director of the Arkansas Energy Office and any person who obtains information that he or she knows to be confidential under this subchapter.

(b) Nothing in this section shall prohibit the use of confidential information to prepare statistics or other general data for publication, so presented as to prevent identification of particular persons.

History. Acts 1983, No. 377, § 4; A.S.A. 1947, § 53-1504; Acts 2007, No. 554, § 4.

Amendments. The 2007 amendment substituted “Confidential treatment” for “Reporting of primary suppliers and brokers” in the section heading; deleted former (a) and redesignated the remain-

ing subsections accordingly; and in present (a), substituted “this subchapter” for “subsection (a) of this section,” substituted “Director of the Arkansas Energy Office” for “director,” and substituted “that he or she knows” for “which is known.”

SUBCHAPTER 9 — INTERSTATE COMPACT TO CONSERVE OIL AND GAS

SECTION.

15-72-901. Governor authorized to execute agreement — Two-year extension of compact.

15-72-902. Text.

15-72-903. Extension or termination of compact by Governor.

SECTION.

15-72-904. Governor official representative of state on commission — Assistant representative.

15-72-901. Governor authorized to execute agreement — Two-year extension of compact.

The Governor is authorized and directed, for and in the name of the State of Arkansas, to join with other states in the Interstate Compact to Conserve Oil and Gas, which was heretofore executed in the City of Dallas, Texas, on February 16, 1935, and now deposited with the Department of State of the United States, and which has been twice extended for a two-year period, and to enter into and execute an agreement with other states now parties or which may hereafter become parties, whereby said compact shall be extended for a period of two (2) years from September 1, 1941, subject to the approval of Congress.

History. Acts 1941, No. 86, § 1; A.S.A. 1947, § 53-801.

15-72-902. Text.

The Interstate Compact to Conserve Oil and Gas referred to in the above section, and which it is hereby proposed to enter and to extend by agreement, subject to the approval of Congress, reads as follows:

“AN INTERSTATE COMPACT TO CONSERVE OIL AND GAS**“ARTICLE I.**

“This agreement may become effective within any compacting state at any time as prescribed by that state, and shall become effective within those states ratifying it whenever any three of the states of Texas, Oklahoma, California, Kansas, and New Mexico have ratified and Congress has given its consent. Any oil-producing state may become a party hereto as hereinafter provided.

“ARTICLE II.

“The purpose of this compact is to conserve oil and gas by the prevention of physical waste thereof from any cause.

“ARTICLE III.

“Each state bound hereby agrees that within a reasonable time it will enact laws, or if laws have been enacted, then it agrees to continue the same in force, to accomplish with reasonable limits the prevention of:

“(a) The operation of any oil well with an inefficient gas-oil ratio.

“(b) The drowning with water of any stratum capable of producing oil or gas, or both oil and gas in paying quantities.

“(c) The avoidable escape into the open air or the wasteful burning of gas from a natural gas well.

“(d) The creation of unnecessary hazards.

“(e) The drilling, equipping, locating, spacing or operating of a well or wells so as to bring about physical waste of oil or gas or loss in the ultimate recovery thereof.

“(f) The inefficient, excessive or improper use of the reservoir in producing any well.

The enumeration of the foregoing subjects shall not limit the scope of the authority of any state.

“ARTICLE IV.

“Each state bound hereby agrees that it will, within a reasonable time, enact statutes, or if such statutes have been enacted then that it will continue the same in force, providing in effect that oil produced in violation of its valid oil and/or gas conservation statutes or any valid rule, order or regulation promulgated thereunder, shall be denied access to commerce; and providing for stringent penalties for the waste of either oil or gas.

“ARTICLE V.

“It is not the purpose of this compact to authorize the states joining herein to limit the production of oil or gas for the purpose of stabilizing or fixing the price thereof, or create or perpetuate monopoly, or to promote regimentation, but is limited to the purpose of conserving oil and gas and preventing the avoidable waste thereof within reasonable limitations.

“ARTICLE VI.

“Each state joining herein shall appoint one representative to a commission hereby constituted and designated as THE INTERSTATE OIL COMPACT COMMISSION, the duty of which said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about conservation, and at such intervals as said Commission deems beneficial it shall report its findings and recommendations to the several states for adoption or rejection.

“The Commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their several jurisdictions to promote the maximum ultimate recovery from the petroleum reserves of said states, and to recommend measures for the maximum ultimate recovery of oil and gas. Said Commission shall organize and adopt suitable rules and regulations for the conduct of its business.

“No action shall be taken by the Commission except: (1) By the affirmative votes of the majority of the whole number of the compacting states, represented at any meeting, and (2) by a concurring vote of a majority in interest of the compacting states at said meeting, such interest to be determined as follows: Such vote of each state shall be in the decimal proportion fixed by the ratio of its daily average production during the preceding calendar half-year to the daily average production of the compacting states during said period.

“ARTICLE VII.

“No state by joining herein shall become financially obligated to any other state, nor shall the breach of the terms hereof by any state subject such state to financial responsibility to the other states joining herein.

“ARTICLE VIII.

“This compact shall expire September 1, 1937. But any state joining herein may, upon sixty (60) days notice, withdraw herefrom.

“The representatives of the signatory states have signed this agreement in a single origin which shall be deposited in the archives of the Department of State of the United States, and a duly certified copy shall be forwarded to the Governor of each of the signatory states.

"This compact shall become effective when ratified and approved as provided in Article 1. Any oil-producing state may become a party hereto by affixing its signature to a counterpart to be similarly deposited, certified and ratified.

"Done in the City of Dallas, Texas, this sixteenth day of February, 1936.

"E. W. MARLAND
THE GOVERNOR OF THE STATE OF OKLAHOMA

"JAMES V. ALLRED
THE GOVERNOR OF THE STATE OF TEXAS

"R. L. PATTERSON
FOR THE STATE OF CALIFORNIA

"FRANK VESELY
"E. H. WELLS
"HUGH BURCH
"HIRAM M. DOW
FOR THE STATE OF NEW MEXICO

"The following representatives recommended to their respective governors and legislatures the ratification of the foregoing agreement:

"JOHN W. OLVEY
OF ARKANSAS

"WARWICK M. DOWNING
OF COLORADO

"WILLIAM BELL
OF ILLINOIS

"GORDON E. VAN EENANAAM
"GERALD COTTER
OF MICHIGAN

"RALPH J. PRYOR
"E. B. SHAWVER
"T. C. JOHNSON
OF KANSAS."

History. Acts 1941, No. 86, § 2; A.S.A. 1947, § 53-802.

Publisher's Notes. This compact did

not expire on September 1, 1937, but has been periodically renewed and extended.

15-72-903. Extension or termination of compact by Governor.

The Governor of Arkansas is further authorized and empowered, for and in the name of the State of Arkansas, to execute agreements for the further extension of the expiration date of the Interstate Oil Compact to Conserve Oil and Gas, and to determine if and when it shall be for the best interest of the State of Arkansas to withdraw from said compact upon sixty (60) days' notice as provided by its terms. In the event he or she shall determine that the state should withdraw from said compact, he or she shall have full power and authority to give necessary notice and to take any and all steps necessary and proper to effect the withdrawal of the State of Arkansas from said compact.

History. Acts 1941, No. 86, § 3; A.S.A. 1947, § 53-803.

15-72-904. Governor official representative of state on commission — Assistant representative.

The Governor shall be the official representative of the State of Arkansas on the Interstate Oil Compact Commission, provided for in the Interstate Compact to Conserve Oil and Gas, and shall exercise and perform for the State of Arkansas all the powers and duties as a member of the Interstate Oil Compact Commission; provided that he or she shall have the authority to appoint an assistant representative of the State of Arkansas as a member of said commission. Said assistant representative shall take the oath of office prescribed by the Arkansas Constitution, which shall be filed with the Secretary of State.

History. Acts 1941, No. 86, § 4; A.S.A. 1947, § 53-804.

SUBCHAPTER 10 — ENHANCED RECOVERY

SECTION.

- 15-72-1001. Tax incentives — Increased volume by enhanced recovery.
- 15-72-1002. Tax incentives — Reestablishment of inactive wells and fields.

SECTION.

- 15-72-1003. Tax incentives — Increased volume by new research technology.

A.C.R.C. Notes. Acts 1995, No. 1093, § 5, provided: "This act is supplemental to all other oil and gas laws of this state, and shall not be deemed to repeal any such laws."

Preambles. Acts 1995, No. 1093 contained a preamble which read: "Whereas, the domestic oil and gas industry is in a state of economic distress as the result of

increased costs of drilling, completing and equipping wells for the production of petroleum hydrocarbons and as a consequence of the depressed price structure occurring as the result of the importation of low cost foreign crude oil which has directly resulted in a substantial reduction of exploratory and drilling operations and the decline in employment within an

industry critical to this state and the nation; and

“Whereas, the average oil well within the State of Arkansas produces 3.6 barrels of crude oil per day in conjunction with the production of substantial volumes of salt water which is required to be disposed of at significant cost in conformity with requirements imposed by both state and federal governmental agencies; and

“Whereas, the depressed price for crude oil which in most instances is low gravity and contains a sulphur content limiting and restricting its marketability so as to result in a negative cash flow and an acceleration in the economic limits of continued production resulting in such wells being shut-in and plugged and abandoned

by environmental constraints; and

“Whereas, the industry lacks the economic incentive to maximize the recovery of the residual crude oil, the cumulative volume of which is significant, by enhanced means of recovery through the initiation of improved techniques within the industry to provide consistent with the national trend of other states production of petroleum hydrocarbons, tax relief and other economic incentives to promote exploration and development and the reestablishment of the production of crude oil from non-productive wells otherwise scheduled for and required to be plugged and abandoned.

“Now therefore....”

15-72-1001. Tax incentives — Increased volume by enhanced recovery.

An oil producer who initiates a program for the enhanced recovery of crude oil pursuant to a plan first approved by the Oil and Gas Commission for purposes of recovering the incremental oil from a well or group of wells which results in the production of a volume of crude oil in excess of the volume produced prior to the commencement of the project shall be granted a fifty percent (50%) reduction in the severance tax which would otherwise be required to be paid, as provided for in § 26-58-111(6), on the total quantity of the incremental increase in crude oil produced as a result of the approved enhanced recovery project.

History. Acts 1995, No. 1093, § 1.

15-72-1002. Tax incentives — Reestablishment of inactive wells and fields.

(a) Any oil well which has been inactive and has failed to produce any volume of crude oil for a period of at least twelve (12) consecutive calendar months which is restored and reestablished as a producer of crude oil shall be exempt from the payment of severance taxes on the volume of production for a period of ten (10) years from and after the date upon which the production is reestablished.

(b) Any oil field established by the Oil and Gas Commission which has become inactive by the cessation of production for a period of not less than twelve (12) consecutive calendar months shall be exempt from the payment of severance taxes in the event production of crude oil from the field is reestablished with respect to all crude oil subsequently produced from the zones, horizons, and formations which had previously been productive but subsequently ceased to produce.

History. Acts 1995, No. 1093, §§ 2, 3.

15-72-1003. Tax incentives — Increased volume by new research technology.

If the utilization of new research technology results in the increased production of crude oil by an active field, as established by the Oil and Gas Commission, then the total quantity of the incremental increase in crude oil produced as a result of the new technology shall be exempt from severance tax.

History. Acts 1995, No. 1093, § 4.

CHAPTER 73
OIL AND GAS LEASES AND LEASE INTERESTS

SUBCHAPTER.

- 1. GENERAL PROVISIONS. [RESERVED.]
 - 2. LEASES GENERALLY.
 - 3. LEASES BY LIFE TENANTS.
 - 4. PARTITION OF OIL AND GAS LEASE INTERESTS.
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Publisher's Notes. As to ratification of certain prior leases, see Acts 1923, No. 628 and Acts 1923 (1st Ex. Sess.), No. 6.

RESEARCH REFERENCES

ALR. Determining market value or market price in oil and gas lease requiring royalty to be paid on standard measured by such terms. 10 A.L.R.4th 732.
Reversion of mineral estates for abandonment or nonuse. 16 A.L.R.4th 1029.
Implied duty of lessee to protect against

drainage. 18 A.L.R.4th 14, 18 A.L.R.4th 147.
Production on one tract as extending term on other tract where one mineral lease conveys oil or gas rights in separate tracts for as long as oil or gas is produced. 35 A.L.R.4th 1167.

SUBCHAPTER 1 — GENERAL PROVISIONS
[Reserved]

SUBCHAPTER 2 — LEASES GENERALLY

SECTION.

- 15-73-201. Lease extended by production — Scope.
- 15-73-202. Leases of oil, gas, and mining interests by churches, lodges, and eleemosynary institutions.

SECTION.

- 15-73-203. Forfeiture of oil, gas, or mineral leases — Duty of lessee to cancel or release.
- 15-73-204. Notice to lessee to release forfeited lease — Damages for failure to release.

SECTION.

15-73-205. Failure to pay rental installment — Endorsement of forfeiture.

15-73-206. [Repealed.]

SECTION.

15-73-207. Prudent operator standard.

15-73-208. Transfer of mineral lease — Notice.

Cross References. Contracting laborers and materialmen's lien on oil and gas leases, § 18-44-201 et seq.

Measurement of oil removed from lease, § 15-74-202.

Preambles. Acts 1983, No. 330 contained a preamble which read: "Whereas, the energy crisis and the deregulation of the oil and gas producing industry have substantially increased the interest of and exploration for oil and gas in Arkansas; and

"Whereas, many citizens of Arkansas are not well-versed in the finer points of complex oil and gas law, especially in those regions of the State where there has been little, if any, previous exploratory effort; and

"Whereas, the standard oil and gas lease contains in the habendum clause a provision that if production in paying quantities is had in any part of the lands covered by the lease that the lease term is extended with respect to all lands covered by the lease; and

"Whereas, such a clause unduly and unconscionably restricts the rights of the lessors of the nonproducing unexplored lands which restriction is against the public policy of encouraging the discovery and production of oil and gas;

"Now, therefore...."

Effective Dates. Acts 1921, No. 192, § 3: approved Mar. 1, 1921. Emergency clause provided: "This act being necessary

for the public peace, health and safety, an emergency is hereby declared, and this act shall take effect and be in force from and after its passage."

Acts 1923, No. 170, § 4: effective on passage.

Acts 1923, No. 628, § 4: approved Mar. 23, 1923. Emergency clause provided: "This act being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in force from and after its passage."

Acts 2009, No. 719, § 2: Mar. 31, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that oil and gas leasing activity has significantly increased in the state; that the ongoing development of the state's oil and gas resources is vital to the state's economic wellbeing; and that the relationship between mineral lessors and mineral lessees must be clarified to encourage investment in and development of the state's natural resources. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

RESEARCH REFERENCES

Am. Jur. 38 Am. Jur. 2d, Gas & O., § 54 et seq.

C.J.S. 58 C.J.S., Mines, § 195 et seq.

CASE NOTES

Implied Covenant.

Lessee held to have breached a duty under the implied covenant to market owed to the lessors under the leases; the breach occurred when the lessee failed to

retain and pay over to the royalty owners a proportionate share of the premium paid by gas purchaser to settle take-or-pay claims. *Klein v. Arkoma Prod. Co.*, 73 F.3d 779 (8th Cir. 1996), cert. denied, *Jones v.*

Klein, 519 U.S. 815, 519 U.S. 816, 117 S. Ct. 65 (1996).

15-73-201. Lease extended by production — Scope.

(a) The term of an oil and gas, or oil or gas, lease extended by production in quantities in lands in one (1) section or pooling unit in which there is production shall not be extended in lands in sections or pooling units under the lease where there has been no production or exploration.

(b) This section shall not apply when drilling operations have commenced on any part of lands in sections or pooling units under the lease within one (1) year after the expiration of the primary term, or within one (1) year after the completion of a well on any part of lands in sections or pooling units under the lease.

(c) The provisions of this section shall apply to all oil and gas, or oil or gas, leases entered into on and after July 4, 1983.

History. Acts 1983, No. 330, §§ 1-3; A.S.A. 1947, §§ 53-321 — 53-323.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Well, Now, Ain't That Just Fugacious!: A Basic	Primer on Arkansas Oil and Gas Law, 29 U. Ark. Little Rock L. Rev. 211.
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CASE NOTES

ANALYSIS

In General.
Failure to Produce.

In General.

Without this section, a lessee could attempt to tie up the majority of a leasehold by some production of pooling on the minor part. *Crystal Oil Co. v. Warmack*, 313 Ark. 381, 855 S.W.2d 299 (1993).

Failure to Produce.

Inactivity of 22 years on a 120 acre tract violated the implied covenant to develop all 200 acres covered by the lease, and the chancellor was correct to regard the lease as a nullity. *Crystal Oil Co. v. Warmack*, 313 Ark. 381, 855 S.W.2d 299 (1993).

Cited: *Davis v. Ross Prod. Co.*, 322 Ark. 532, 910 S.W.2d 209 (1995).

15-73-202. Leases of oil, gas, and mining interests by churches, lodges, and eleemosynary institutions.

Except where otherwise provided for in the charter, constitution, or bylaws of any church, lodge, or other eleemosynary institution, the trustee, deacons, or other governing body shall have the right and authority to make, execute, and deliver oil, gas, and mining leases, and mineral deeds upon lands owned by the institutions upon such terms and conditions as the governing body shall deem to be in the best interest of the institutions, and the majority vote of the body shall control in all such actions taken by the body.

History. Acts 1923, No. 628, § 1; Pope's Dig., §§ 10503, 11370; A.S.A. 1947, § 53-301.

Publisher's Notes. As to ratification of prior leases, see Acts 1923, No. 628, § 2 and Acts 1923 (1st Ex. Sess.), No. 6, § 1.

15-73-203. Forfeiture of oil, gas, or mineral leases — Duty of lessee to cancel or release.

(a) It shall be the duty of each person holding an oil, gas, or other mineral lease for prospecting and exploiting for oil, gas, or other minerals, upon any real estate in the State of Arkansas, upon forfeiting the rights to further prospect on the lands by failure to pay any rental or to perform any condition imposed by the terms of the lease on the lessee, or otherwise forfeiting the rights under the lease, upon the notice hereinafter prescribed in § 15-73-204 by the lessor, to execute a release to the grantor or otherwise remove any cloud or encumbrance on the title to the lands by reason of the forfeited lease.

(b)(1) However, it shall be sufficient if the lessee in the original lease, or his or her assignee of record, shall endorse on the margin of the record of the original lease a cancellation or release of the lease. Endorsing on the margin of the record of the original release such words as "FORFEITED AND CANCELLED" followed by the date of entry and the signature of the owner of the lease of record, either the original lessee or the then owner by proper assignments of record, attested to by the recorder, shall be sufficient. No satisfaction or cancellation on the margin of the record shall be sufficient unless it is attested to by the recorder in person or by his or her deputy.

(2) No person shall be required to release of record any portion of an original lease which he or she does not own, but is responsible only for that portion of the lease to which he or she holds title of record.

History. Acts 1921, No. 192, § 1; 1923, No. 170, § 1; Pope's Dig., § 10505; A.S.A. 1947, § 53-312.

Cross References. Lease forfeited where lessee receives more than royalty owner, § 15-74-708.

CASE NOTES

Cited: Hill v. Larcon Co., 131 F. Supp. 469 (W.D. Ark. 1955).

15-73-204. Notice to lessee to release forfeited lease — Damages for failure to release.

Any owner of lands upon which a lease for the development of oil or gas or other minerals has been given and the lessee forfeits his or her rights at any time to further prospect for such minerals upon the lands by reason of a failure to pay periodical rentals or failure to perform other conditions that nullify the lease as to lessee's rights therein may give written notice, served in the manner of a legal summons upon the lessee, demanding that the lessee execute and place on record a release which in effect will remove any cloud existing upon the title of the lands

as provided in § 15-73-203. Upon failure of the lessee to comply with the notice, he or she shall be liable to the lessor or owner of the lands:

(1) In double damages in whatever sum the owner of the lands may sustain by reason of the cloud or encumbrances upon the lands, after thirty (30) days from the service of the notice, to be not less than two (2) annual rentals as fixed by the original lease; and

(2) For all costs, including a reasonable attorney's fee to be fixed by the court.

History. Acts 1921, No. 192, § 2; 1923, No. 170, § 2; Pope's Dig., § 10506; A.S.A. 1947, § 53-313.

CASE NOTES

ANALYSIS

Construction.
Applicability.
Good Faith.

Construction.

This act is penal and must be strictly construed. *Prewitt v. Chambers*, 209 Ark. 807, 194 S.W.2d 186 (1946).

Applicability.

This section was not applicable to a lessee under a lease covering the mining of bauxite who contended that the lease had not been forfeited. *Prewitt v. Chambers*, 209 Ark. 807, 194 S.W.2d 186 (1946).

Good Faith.

Absent a finding by the court that the lease had in fact been abandoned, lessor was not entitled to double damages for technical forfeiture of lease where the lessee in good faith contended that lease was still in full force and the provisions of the lease were such that a reasonable construction might support lessee's contention. *Hill v. Larcon Co.*, 131 F. Supp. 469 (W.D. Ark. 1955).

Cited: *Wilson v. Talbert*, 259 Ark. 535, 535 S.W.2d 807 (1976).

15-73-205. Failure to pay rental installment — Endorsement of forfeiture.

(a) If any installment of rental due under a lease is not paid when due according to the terms of the original lease, thus causing a forfeiture and termination of the lease, the then-owner of the fee in the lands affected may endorse on the margin of the record of the original lease a statement to the effect that the rental has not been so paid and that the lease therefore is forfeited, which endorsement shall be signed by the landowner and dated and attested by the recorder, and shall be notice binding upon all subsequent purchasers or holders under the original lease, and shall be prima facie evidence of the termination and forfeiture of the lease.

(b)(1) Provided, if any person shall wrongfully or falsely make the endorsement, or cause the endorsement to be made, he or she shall be liable for double damages to any person injured or damaged thereby.

(2) Provided further, this section shall not relieve the owner of the lease from the duty of clearing the record as provided by § 15-73-203.

History. Acts 1923, No. 170, § 3; Pope's Dig., § 10507; A.S.A. 1947, § 53-314.

CASE NOTES

Cited: Hill v. Larcon Co., 131 F. Supp. 469 (W.D. Ark. 1955).

15-73-206. [Repealed.]

Publisher's Notes. This section, concerning notice of assignment of working lease, was repealed by Acts 1989, No. 201, § 1. The section was derived from Acts 1987, No. 578, §§ 1-3.

15-73-207. Prudent operator standard.

(a) A mineral lessee under an oil and gas lease does not owe a fiduciary duty or a fiduciary obligation to the mineral lessor.

(b) The mineral lessee shall:

- (1) Perform the covenants of the lease in good faith; and
- (2) Develop and operate the leased mineral estate as a prudent operator for the mutual benefit of the mineral lessor and mineral lessee.

History. Acts 2009, No. 719, § 1.

15-73-208. Transfer of mineral lease — Notice.

(a) A person holding a mineral lease shall notify the owner of the mineral rights upon which the lease has been given upon the first transfer of the mineral lease to another person if the transfer occurs within twenty-four (24) months after the execution of the lease.

(b) The written notice shall include:

- (1) The name of the buyer of the mineral lease;
- (2) The address of the buyer of the mineral lease; and
- (3) Information on how to contact the buyer of the mineral lease.

(c) The written notice shall be sent through the United States Postal Service by first class mail.

(d) This section shall apply to a mineral lease entered into after August 1, 2009.

History. Acts 2009, No. 1183, § 1.

SUBCHAPTER 3 — LEASES BY LIFE TENANTS

SECTION.

- 15-73-301. Leases by persons invested with life estate.
- 15-73-302. Petition to lease by life tenant — Contents.
- 15-73-303. Hearing on lease execution.

SECTION.

- 15-73-304. Court determinations, orders, and appointments.
- 15-73-305. Court approval of lease and confirmation of sale.
- 15-73-306. Trustee.

SECTION.

15-73-307. Divestiture of contingent remaindermen's title.

15-73-308. Expiration, forfeiture, or cancellation of lease — New lease.

SECTION.

15-73-309. Binding conveyances by reversioner or remaindermen to life tenant or his or her lessee.

Effective Dates. Acts 1929, No. 76, § 10: approved Mar. 2, 1929. Emergency clause provided: "It appearing to the General Assembly that the immediate passage of this act is necessary in order to prevent waste of valuable oil lands conveyed to persons and the heirs of their bodies, making said act necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared and this act will be in force and effect on and after its passage."

Acts 1945, No. 155, § 2: Mar. 2, 1945. Emergency clause provided: "Whereas, it has been found that many titles are in a state of uncertainty and that the owners of lands in this state are suffering losses by reason of the said uncertainty of titles, an emergency is hereby declared and this act, being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Wright, The Arkansas Law of Oil and Gas, 9 U. Ark. Little Rock L.J. 223.

CASE NOTES

Constitutionality.

Sections 15-73-301 — 15-73-308 are not unconstitutional as impairing the obligation of a contract with respect to remainderman because only contracts which create a vested beneficial interest are afforded protection by the prohibition against impairment. *Love v. McDonald*, 201 Ark. 882, 148 S.W.2d 170 (1941).

Sections 15-73-301 — 14-73-308 are not unconstitutional for depriving remainderman of property without due process, because the interest of a remainderman is not property within due process clause of the Constitution. *Love v. McDonald*, 201 Ark. 882, 148 S.W.2d 170 (1941).

Cited: *Waller v. Rhyne*, 232 Ark. 501, 338 S.W.2d 670 (1960).

15-73-301. Leases by persons invested with life estate.

Whenever any land in this state may hereafter be, or shall have heretofore been, devised by will or conveyed by grant to any person by any language which at common law would have vested in that person an estate in fee tail, then the person who at common law would have been invested with a fee tail estate in the lands and who under the provisions of § 18-12-301 is or shall be invested with a life estate therein is authorized and empowered to execute oil and gas leases on the land, in the manner set out in this subchapter.

History. Acts 1929, No. 76, § 1; Pope's Dig., § 1800; A.S.A. 1947, § 53-302.

15-73-302. Petition to lease by life tenant — Contents.

Whenever any life tenant shall desire to lease any land for the production of oil and gas, he or she shall file a verified petition with the circuit court of the county in which the lands or the greater part thereof may be situated, praying for authority to execute the lease. The person shall make as parties respondent to the petition all persons then in being who under the terms of the will or grant would become invested with title to the lands or any interest therein should the death of the life tenant occur on the date of the filing of the petition. The petition shall set out:

- (1) The description of the land;
- (2) From whom he or she acquired his or her title, with an attached, certified copy of the will or deed under which he or she claims;
- (3) The name of the proposed lessee, the true consideration for the lease, and a general statement as to the provisions of the proposed lease; and
- (4) A prayer for authority to execute the lease, and for the court to award the life tenant with title absolute in such proportion of the oil, gas, and other minerals, in, on, and under the lands, not exceeding a one-sixteenth (1/16) interest, together with the proportion of the consideration and delay rentals, as the court shall determine is fair compensation to the life tenant as damages to the life estate by the use of the surface of the lands in the exploration for and the development of oil and gas therefrom, and the petition shall further pray for the appointment of a trustee to receive and hold the moneys, rents, and royalties as shall accrue to the contingent remainder estate under the lease.

History. Acts 1929, No. 76, § 2; Pope's Dig., § 1801; A.S.A. 1947, § 53-303.

15-73-303. Hearing on lease execution.

(a) The circuit court shall consider the petition, and may, in its absolute discretion, require that other persons as it deems proper be made parties to the proceeding.

(b) All proceedings under the provisions of this subchapter shall begin at any time the court shall be in session twenty (20) days after service of summons on the respondents.

(c) The court may hear oral testimony to determine whether or not the execution of the lease is advisable.

(d) It shall also determine what part of the consideration therefor, the rentals accruing thereunder, and what proportion of the oil, gas, and minerals should be allowed to the life tenant in fee simple as compensation for the damage to his or her life estate on account of the execution of the lease.

History. Acts 1929, No. 76, §§ 3, 9; Pope's Dig., §§ 1802, 1808; A.S.A. 1947, §§ 53-304, 53-305.

15-73-304. Court determinations, orders, and appointments.

If the circuit court after the hearing shall determine that the lease should be executed, it shall enter an order authorizing the life tenant to execute the lease. The court shall:

(1) Determine the extent to which the estate of the life tenant may be damaged or impaired by the development and operations of the property for oil and gas, and the court may allow the life tenant as compensation all or any part of the consideration paid for the lease, and all or any part of the rentals which may accrue on account of delay in beginning operations, and the proportion of the oil, gas, and minerals in, on, and under the lands, not to exceed an undivided one-sixteenth (1/16) interest therein. The order of the court, upon the approval and confirmation of the lease as provided in § 15-73-305, shall vest in such life tenant title absolute in fee simple in and to the proportionate part of the consideration, delay rentals, and mineral interest so awarded to him or her by the court, which interest shall be free and clear of any limitations, conditions, or restrictions imposed by the will or deed by which he or she acquired title, and free and clear of any present or future claim of any person or persons asserting or attempting to assert a reversional or a remainder interest therein on account of the deed or will;

(2) Appoint some suitable person as trustee for the benefit of the contingent remaindermen and reversioners, and require that the trustee shall execute bond in a sum as the court may deem proper;

(3) Direct and authorize the life tenant, after the filing of the bond by the trustee, to execute to the lessee an oil and gas lease covering the lands, which lease shall reserve as royalty not less than one-eighth (1/8) of the oil and gas which may be produced, saved, and marketed from the lands. Of the royalty so reserved, the life tenant shall receive the proportion as the mineral interest allowed to him or her by the court as damages bears to the amount of royalty reserved under the lease, i.e. if the court allows the life tenant a one-sixteenth (1/16) interest and the lease reserves one-eighth (1/8) as royalty, the life tenant would be entitled to receive one-half (1/2) of the royalty; and

(4) Make such further orders in the premises as may seem equitable and just.

History. Acts 1929, No. 76, § 4; Pope's Dig., § 1803; A.S.A. 1947, § 53-306.

15-73-305. Court approval of lease and confirmation of sale.

(a) After the trustee shall have executed the bond required by the circuit court, the life tenant shall execute and present to the court for its examination the oil and gas lease so authorized, which lease shall show

what part of the consideration, rents, and royalties shall be paid to the life tenant and what part to the trustee.

(b) If the court shall find the lease conforms to its previous orders, and shall be further satisfied that the consideration therefor has been paid to the trustee and the life tenant in conformity with the previous order of the court, it shall approve the lease and confirm the sale thereof, whereupon the lessee shall become vested with the leasehold interest in and to the oil, gas, and other minerals in, on, and under the lands, free and clear of any limitations, restrictions, or conditions imposed upon the lands in the grant or will under which the life tenant acquired title to the lands, and free and clear of any present or future claim of any person or persons asserting or attempting to assert a reversionary or remainder interest therein on account of the deed or will, and subject only to the conditions imposed by the lease.

History. Acts 1929, No. 76, § 5; Pope's Dig., § 1804; A.S.A. 1947, § 53-307.

15-73-306. Trustee.

(a) The trustee shall be under the continuing control of the circuit court.

(b) The court may remove the trustee at will, and on the death, removal from the county, or resignation of the trustee, the court may appoint his or her successor.

(c) The trustee, by and with the consent and approval of the court, may invest the funds coming into his or her hands in such securities as guardians are authorized to invest the moneys of their wards.

(d) The trustee shall be allowed as compensation for his or her services such sum as the court may fix, not exceeding five percent (5%) of moneys collected by him or her.

(e) The court may at any time require the trustee to execute an additional bond.

(f) The trustee shall faithfully account for all moneys coming into his or her hands and upon the death of the life tenant shall pay over to the person or persons then entitled thereto all of the moneys so accrued upon order of the chancery court.

History. Acts 1929, No. 76, § 7; Pope's Dig., § 1806; A.S.A. 1947, § 53-309.

15-73-307. Divestiture of contingent remaindermen's title.

The order of the court fixing the proportionate part of the minerals allowed to the life tenant as compensation for damages, and the order confirming the execution of the lease, shall operate to:

(1) Work a divestiture of title of the contingent remaindermen, and each of them, in and to the proportionate part of the minerals allowed to the life tenant, absolutely, and in and to the leasehold estate insofar as the interest is conveyed by the lease; and

(2) Free the respective interests of any limitations, restrictions, or conditions imposed by the original will or deed.

History. Acts 1929, No. 76, § 6; Pope's Dig., § 1805; A.S.A. 1947, § 53-308.

15-73-308. Expiration, forfeiture, or cancellation of lease — New lease.

If any lease executed under the provisions of this subchapter shall forfeit, expire, become cancelled, or be rescinded before the death of the life tenant, the life tenant may execute a new lease in the manner provided by this subchapter, but in that case the court shall not allow him or her any further proportion of the minerals, but may allow him or her all or any part of the consideration and the rentals as may seem to the court to be equitable and just.

History. Acts 1929, No. 76, § 8; Pope's Dig., § 1807; A.S.A. 1947, § 53-310.

15-73-309. Binding conveyances by reversioner or remaindermen to life tenant or his or her lessee.

Whenever a life estate in lands has been in existence for thirty (30) years and oil has been produced from such lands for twenty (20) years under an oil and gas lease or leases executed by a life tenant, to whom the creator of the life estate had subsequently conveyed or attempted to convey his or her remaining interest in the land, and where all of the contingent remaindermen in esse at the time of the initial production of such oil have attempted to convey their interests by warranty deeds to the life tenant, or have executed and delivered, either in person or by guardian, an oil and gas lease or leases covering the lands to the life tenant's lessee, then, and in that event, all warranty deeds and all oil and gas leases shall be binding upon all contingent remaindermen who executed the warranty deed or deeds, or who executed the oil and gas lease or leases, whether in person or by guardian, upon their heirs and assigns, and upon all persons who heretofore have become or hereafter might become contingent remaindermen, to the same extent and with like effect as though the remainders had been vested at the time of the execution of the warranty deed or deeds and the oil and gas lease or leases. Where all of the contingent remaindermen in esse at the time of the initial production of oil shall have heretofore or hereafter conveyed or attempted to convey their interest in the land to the life tenant, then, and in that event, the fee title to the land shall be deemed vested in the life tenant free from any and all contingent remainders.

History. Acts 1945, No. 155, § 1; A.S.A. 1947, § 53-311.

SUBCHAPTER 4 — PARTITION OF OIL AND GAS LEASE INTERESTS

SECTION.

- 15-73-401. Partition when entire leasehold is unleased and non-producing.
- 15-73-402. Petition for partition and sale — Parties.
- 15-73-403. Service of summons.
- 15-73-404. Intervention.
- 15-73-405. Guardians.

SECTION.

- 15-73-406. Lease by receiver prior to sale and partition.
- 15-73-407. Procedure — Evidence authorizing lease.
- 15-73-408. Necessary parties — Effect of sale or lease.
- 15-73-409. Retrial on motion of defendant constructively summoned.

Cross References. Sale of timber, oil, gas, and mineral rights for delinquent taxes, § 26-37-210.

Effective Dates. Acts 1981, No. 714, § 75: Mar. 25, 1981. Emergency clause provided: "It has been found and is declared by the General Assembly of Arkansas that existing law relating to such matters as homestead, dower, curtesy, statutory allowances payable from a decedent's estate, and the right of a surviving spouse to take against the will of a decedent, do not in all circumstances provide

for equal treatment between the sexes, that the constitutionality of such existing law has been drawn into question by decisions of the United States Supreme Court and the Arkansas Supreme Court, and that there is an urgent need to insure that the law provides equality in the property rights and interests of married persons. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

RESEARCH REFERENCES

Am. Jur. 38 Am. Jur. 2d, Gas & O., § 11.

U. Ark. Little Rock L.J. Wright, The

Arkansas Law of Oil and Gas, 9 U. Ark. Little Rock L.J. 223.

CASE NOTES

ANALYSIS

Constitutionality.
Applicability.
Fraud.
Particular Cases.
Sale Order.

Constitutionality.

This subchapter is not unconstitutional against contention that it denies due process and confers special privileges. *Overton v. Porterfield*, 206 Ark. 784, 177 S.W.2d 735 (1944).

Applicability.

Section 15-73-401 and related sections do not apply to partition of a leasehold working interest. *Pasteur v. Niswanger*, 226 Ark. 486, 290 S.W.2d 852 (1956).

Fraud.

While the court has discretion to grant or deny relief in order to prevent the right to partition from becoming a weapon of fraud or oppression in the hands of the financially fortunate who might use the right as a means of foreclosure of an owner of limited means, the invocation of that discretion is a matter of defense to be pleaded and proven and did not exist where the defendants did not plead that a decree of partition or sale would constitute fraud or oppression against them. *Schnitt v. McKellar*, 244 Ark. 377, 427 S.W.2d 202 (1968).

Particular Cases.

Where one cotenant owned one-eighth ($\frac{1}{8}$) interest in the fee and minerals and wanted to lease land for oil and gas devel-

opment, court did not abuse its discretion in awarding partition and sale. *Overton v. Porterfield*, 206 Ark. 784, 177 S.W.2d 735 (1944).

It was within the court's discretion to refuse or grant a partition of oil and gas leasehold estates, although a remainderman still had an interest in the leased land and a life tenant was still living. *Oliver v. Culpepper*, 209 Ark. 326, 190 S.W.2d 457 (1945).

Sale Order.

This subchapter does not impose the imperative duty on the court to order a sale in every case where a petition for partition and sale of the oil and gas leasehold is filed by one or more cotenants in compliance with this statute. *Overton v. Porterfield*, 206 Ark. 784, 177 S.W.2d 735 (1944).

15-73-401. Partition when entire leasehold is unleased and non-producing.

Whenever any land in fee, the oil and gas in, on, and under such lands, situated in the State of Arkansas, shall be owned by two (2) or more persons, firms, or corporations in joint tenancy, in common or in coparcenary, and there shall be no actual production therefrom of oil and gas, and no outstanding oil and gas lease thereon covering the entire leasehold estate, any one (1) or more of the owners of the land in fee, and of the oil and gas interest on and in such land, may have a sale and partition of the entire oil and gas leasehold interest therein and thereon, in the manner hereinafter provided.

History. Acts 1935, No. 15, § 1; Pope's Dig., § 10549; A.S.A. 1947, § 53-401.

CASE NOTES

Refusal to Drill.

That lessor owned the surface, but only one-half of the minerals did not excuse

lessee's refusal to drill. *Poindexter v. Lion Oil Ref. Co.*, 205 Ark. 978, 167 S.W.2d 492 (1943).

15-73-402. Petition for partition and sale — Parties.

Any such owner, or owners, desiring a sale and partition of the oil and gas leasehold interests shall file, in the circuit court of the county in which the lands or the greater part thereof lie, a written petition describing the lands in and under which the oil and gas interests lie, and shall make as parties defendant all owners of the various interests in the oil and gas lease rights on and in the lands, and the amount of interest held by each, with a prayer that the whole of the oil and gas lease rights be sold, and that the money derived from the sale be divided among the owners in proportion as their interest shall bear to the whole.

History. Acts 1935, No. 15, § 2; Pope's Dig., § 10550; A.S.A. 1947, § 53-402.

15-73-403. Service of summons.

Summons shall be issued and served as in other cases in circuit court and if any defendant shall be a nonresident of the state, or his or her whereabouts unknown to the plaintiff, such person may be constructively summoned, as provided in § 16-58-130.

History. Acts 1935, No. 15, § 3; Pope's Dig., § 10551; A.S.A. 1947, § 53-403.

15-73-404. Intervention.

Any person having or claiming an interest in the land in fee, or in any oil and gas leasehold rights, not made a party in the petition may appear and intervene in the cause.

History. Acts 1935, No. 15, § 4; Pope's Dig., § 10552; A.S.A. 1947, § 53-404.

15-73-405. Guardians.

(a) The statutory guardian of an infant or a person of unsound mind may unite in the petition in conjunction with his or her ward.

(b) The infant, or person of unsound mind, may be made party defendant, in which case his or her guardian may appear and defend for him or her.

(c) If the guardian does not appear and defend, the circuit court shall appoint some discreet person for that purpose.

History. Acts 1935, No. 15, § 5; Pope's Dig., § 10553; A.S.A. 1947, § 53-405.

15-73-406. Lease by receiver prior to sale and partition.

(a) If, at any time, after the filing of the petition and before a sale of the property, it should be made to appear to the circuit court that the interests of the various owners could be more fully protected and the value of the various interests of the parties increased by the execution of an oil and gas lease providing for the prospecting and drilling for oil and gas upon the property involved in the suit, or upon property near thereto, the court may appoint a receiver who shall be authorized to enter into negotiations for the leasing of the property for the drilling and operating for oil and gas, and if the receiver finds that the property can be leased upon the terms as, in his or her opinion, are beneficial to the various owners, he or she shall file a petition with the court setting out the results of his or her investigation and shall pray for authority to execute the lease.

(b) If the lease shall provide for the payment of royalty of not less than one-eighth ($\frac{1}{8}$) of the production and shall otherwise appear to the court to be to the best interest of all the parties to the suit, the court shall order and direct the receiver to execute the lease upon terms the court deems just and proper, and the person taking the lease shall be

vested with the leasehold rights therein conveyed as fully and with like effect as if the lease had been executed by all of the owners of the oil and gas rights, and their spouses.

(c) Leases executed by the receiver under the authority of the court, as provided in this section, shall not terminate with the termination of the suit for partition nor with the sale and confirmation of the oil and gas rights, but the leases shall continue in full force and effect according to their own terms and conditions as fully and with like effect as if they had been executed by the various owners and their spouses, and any person thereafter purchasing the oil and gas rights, or any interest therein, either from the owners or from the commissioner of the court selling the rights under the decree of sale and partition, shall take the rights subject to the oil and gas lease so executed by the receiver.

History. Acts 1935, No. 15, § 6; Pope's Dig., § 10554; Acts 1981, No. 714, § 8; A.S.A. 1947, § 53-406.

CASE NOTES

Sale by Commissioner.

This section does not contemplate that oil and gas lease can only be negotiated through a receiver appointed by the court,

but it clearly contemplates a sale by a commissioner. *Overton v. Porterfield*, 206 Ark. 784, 177 S.W.2d 735 (1944).

15-73-407. Procedure — Evidence authorizing lease.

Insofar as § 18-60-401 et seq., relating to the partition of land, is not in conflict with this subchapter, those sections shall apply to the partition of interests in oil and gas leasehold rights on, in, and under lands. However, it shall not be necessary for the circuit court to find that the interests are not susceptible to partition in kind before it shall order the execution of any such oil and gas lease, but it shall be sufficient to justify the execution of the oil and gas lease on and covering the land that the evidence shows:

(1) That it is desirable for the property to be developed as a unit for oil and gas; and

(2) That the value of the interest owned by each of the parties would be more if the property were developed and operated as a unit than if divided.

History. Acts 1935, No. 15, § 7; Pope's Dig., § 10555; A.S.A. 1947, § 53-407.

15-73-408. Necessary parties — Effect of sale or lease.

All spouses of the various owners of interests in oil and gas rights shall be necessary parties to the suit in partition, and the sale of the property by the commissioner under the decree, or the leasing of the property by the receiver as provided in this subchapter, shall effectively

cut off all right of dower, curtesy, and homestead of spouses in and to the property rights and interests therein conveyed, leased, or let.

History. Acts 1935, No. 15, § 8; Pope's Dig., § 10556; Acts 1981, No. 714, § 9; A.S.A. 1947, § 53-408.

15-73-409. Retrial on motion of defendant constructively summoned.

Where a decree has been rendered under the provisions of this subchapter against a defendant or defendants, constructively summoned and who did not appear, the defendants or any one (1) or more of them may, at any time within six (6) months, and not thereafter, after the rendition of the decree, appear in open court and move to have the action retried, and security for costs being given, the defendant or defendants, shall be permitted to make defense, and thereupon the action shall be tried anew as to the defendant or defendants as if there had been no decree, and upon the new trial the court may confirm, modify, or set aside the former decree and may order the plaintiff in the action to restore to the defendant or defendants any money of that defendant or defendants paid to him or her under the decree or any property of the defendants obtained by the plaintiff under the decree and yet remaining in his or her possession. However, no order made in a cause authorizing a receiver to execute an oil and gas lease shall be set aside, or the lease cancelled where the motion or petition to set aside the order or lease is filed more than thirty (30) days after the order was made, nor in any event where development has been begun or completed by the lessee under the terms of any such lease.

History. Acts 1935, No. 15, § 9; Pope's Dig., § 10557; A.S.A. 1947, § 53-409.

CHAPTER 74

MEASUREMENT, INSPECTION, AND SALE OF OIL AND GAS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. MEASUREMENT GENERALLY.
3. STANDARD GAS MEASUREMENT LAW.
4. TESTS AND INSPECTIONS.
5. PRICING.
6. PROCEEDS OF SALE GENERALLY.
7. ROYALTIES.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

15-74-101. Information required in divi-

sion order or declaration of interest in gas.

15-74-101. Information required in division order or declaration of interest in gas.

(a) All division orders or any declaration of interest in gas between the purchaser of gas production and the owner of the production in Arkansas or between the purchasers of gas production or the owner of the production and the royalty interest owners in Arkansas shall contain the following information on the first page:

(1) The name and address of the owner of royalties;

(2) A space for the owner's social security number or tax identification number and the other information needed to meet the requirements of the Internal Revenue Service or other governmental agencies and a space for the owner's signature;

(3) The acreage under which the royalty owner has an interest and the fractional or decimal interest owned by the royalty owner in the pool;

(4) The total amount of the net mineral acres in the area subject to the division order; and

(5) The effective date of the division order.

(b) The terms of this section shall not be applicable to any producing unit or well that produces liquid hydrocarbons only, or liquid hydrocarbons associated with the production of gas, or gas produced associated with the production of liquid hydrocarbons.

History. Acts 1987, No. 605, §§ 1, 2.

SUBCHAPTER 2 — MEASUREMENT GENERALLY**SECTION.**

15-74-201. Accurate measurement of crude petroleum oil.

15-74-202. Prohibition on removing oil or gas from lease without measurement and recording.

SECTION.

15-74-203. Prohibition on discounting crude for waste, shrinkage, etc. — Proper computation of purchase.

Effective Dates. Acts 1939, No. 205, § 4: approved Mar. 9, 1939. Emergency clause provided: "This act being essential to insure an honest and accurate measurement of crude petroleum oil produced

in Arkansas and necessary for the public peace, health and safety, an emergency is hereby declared to exist and this act shall be effective from and after its passage."

Acts 1943, No. 261, § 4: Mar. 18, 1943.

RESEARCH REFERENCES

Am. Jur. 38 Am. Jur. 2d, Gas & O., §§ 152, 153.

15-74-201. Accurate measurement of crude petroleum oil.

(a) All crude petroleum oil produced in this state shall be measured in gauge-tanks. The pipelines through which the crude petroleum oil is conveyed from oil wells to the gauge-tanks shall be placed on the surface of the ground and no bypasses shall extend from the pipelines between the oil wells and gauge-tanks. However, this section shall not apply to oil wells in operation prior to the date of the passage of this act.

(b) The Oil and Gas Commission shall have supervision and control of the measurement of crude petroleum oil produced in this state as set forth in subsection (a) of this section. The commission shall make a daily record of the measurement of the crude petroleum oil, and it is authorized and empowered to make reasonable and necessary rules and regulations for the enforcement of the purposes of this section.

History. Acts 1939, No. 205, §§ 1, 2; term “passage of this act,” Acts 1939, No. A.S.A. 1947, §§ 53-501, 53-502. 205, was signed by the Governor and

Publisher’s Notes. In reference to the became effective on March 9, 1939.

15-74-202. Prohibition on removing oil or gas from lease without measurement and recording.

(a) It shall be unlawful for any person, firm, corporation, or association, being the owner or operator of any oil or gas well in this state, to take or remove any oil or oil-bearing gas from any lease, unless the oil or gas so taken and removed from the lease is to be gauged or measured and a correct record of the amount of oil or oil-bearing gas so taken or removed from the lease be kept. Provided, this bill shall not be construed to include oil-bearing gas produced from so-called “stripper” wells, the gas from which is not marketable.

(b) If any person, firm, corporation, or association operating or producing any oil or gas from any well of this state shall violate the terms of subsection (a) of this section, then his or her or its ownership in the lease under which the well is being operated shall be voidable and subject to cancellation upon suit or suits instigated by the owner or owners of the royalty and mineral interests of the leased premises upon which the violation occurs.

(c) In the event the mineral interests under the leased premises are owned by several different persons, firms, corporations, or associations, then the leasehold interest on the premises on which the violation occurs shall be declared separable, and the interest in the leasehold as owned by the person, firm, corporation, or association violating the terms of this section shall be cancelled.

History. Acts 1943, No. 261, §§ 1-3; A.S.A. 1947, §§ 53-503 — 53-505.

15-74-203. Prohibition on discounting crude for waste, shrinkage, etc. — Proper computation of purchase.

(a) It shall be unlawful for any person, firm, or corporation who may purchase any oil produced in this state to in any way discount, dock, or short crude oil for waste, shrinking, or other causes, but such purchases when computed shall be on one hundred percent (100%) net oil measured on one hundred percent (100%) tank-tables and corrected to sixty degrees Fahrenheit (60° F). All production, runs to storage, and deliveries are to be based on one hundred percent (100%) tank-tables, with proper adjustments for temperature, B. S., and water.

(b) Any person, firm, or corporation found guilty of violating the provisions of this section shall be adjudged guilty of a misdemeanor and shall be fined in any sum not less than five hundred dollars (\$500) nor more than three thousand dollars (\$3,000).

History. Acts 1941, No. 397, §§ 1, 2; A.S.A. 1947, §§ 53-506, 53-507.

SUBCHAPTER 3 — STANDARD GAS MEASUREMENT LAW

SECTION.
15-74-301. Title.
15-74-302. Cubic foot of gas defined.
15-74-303. Determination of specific gravity and flowing temperature.

SECTION.
15-74-304. Reports of gas production.
15-74-305. Measurement, accounting, etc., of gas sold or delivered by volume.

Effective Dates. Acts 1951, No. 214, § 8: Mar. 1, 1951. Emergency clause provided: "It has been found and is declared by the General Assembly of the State of Arkansas that the present standard gas measurement law is vague and indefinite in many respects and makes no provision for the administration of such law, and

that the enactment of this act will remedy this situation; therefore, an emergency is declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall take effect and be in full force from and after the date of its passage and approval."

RESEARCH REFERENCES

Am. Jur. 38 Am. Jur. 2d, Gas & O., §§ 152, 153.

15-74-301. Title.

This subchapter shall be known and may be cited as the "Standard Gas Measurement Law".

History. Acts 1951, No. 214, § 1; A.S.A. 1947, § 53-516.

15-74-302. Cubic foot of gas defined.

(a) The term “cubic foot of gas” or “standard cubic foot of gas” means the volume of gas contained in one cubic foot (1 cf) of space at a standard pressure base and at a standard temperature base.

(b) The standard pressure base shall be fourteen and sixty-five one hundredths pounds per square inch (14.65 lbs. p.s.i.) absolute, and the standard temperature base shall be sixty degrees Fahrenheit (60° F).

(c) Whenever the conditions of pressure and temperature differ from the above standard, conversion of the volume from these conditions to the standard conditions shall be made in accordance with the Ideal Gas Laws with correction for deviation from Boyle’s Law, which correction must be made unless the pressure at the point of measurement is two hundred pounds per square inch (200 lbs. p.s.i.) gauge, or less, all in accordance with methods and tables generally recognized by and commonly used in the natural gas industry.

(d) For all purposes of computing standard cubic feet of gas under this subchapter, the barometric pressure may be assumed to be fourteen and six-tenths pounds per square inch (14.6 lbs. p.s.i.) absolute at the place of measurement.

History. Acts 1951, No. 214, § 2; A.S.A. 1947, § 53-517.

15-74-303. Determination of specific gravity and flowing temperature.

(a) The Oil and Gas Commission is authorized and empowered, in the absence of the availability of satisfactory actual data based upon observed or recorded specific gravity and flowing temperature determinations, to determine the average specific gravity and average flowing temperature of the gas at the point of measurement, as produced in each oil or gas field or pool in Arkansas which, after being so determined, shall be used to calculate the standard cubic foot.

(b) If for any reason the commission has not so determined the average specific gravity and average flowing temperature of the gas produced in any oil or gas field or pool in Arkansas, the average specific gravity shall be assumed to be six-tenths (6/10) and the average flowing temperature shall be assumed to be sixty degrees Fahrenheit (60°F).

(c) In the event that the commission finds the necessity therefor or upon the request of any interested party, the commission shall give notice and hold a public hearing before making those determinations.

(d) Promptly upon those determinations, the commission shall make and publish the findings and promulgate reasonable field rules as necessary to effectuate the provisions of this subchapter.

(e) Any person, association of persons, or corporation shall be permitted to use the findings and field rules of the commission for all purposes under this subchapter, but if such findings or field rules are not so used in determining volumes under this subchapter, the volumes so otherwise determined shall be corrected to the basis of the “standard

cubic foot of gas” as defined in § 15-74-302. However, nothing in this subchapter shall ever prevent the use of actual recorded values and actual test data, where available, for all purposes whatsoever under this statute.

History. Acts 1951, No. 214, § 3; A.S.A. 1947, § 53-518.

15-74-304. Reports of gas production.

Any person required to report volumes of gas production under the laws of this state shall report such volumes in number of thousands of standard cubic feet calculated and determined under the provisions of this subchapter.

History. Acts 1951, No. 214, § 4; A.S.A. 1947, § 53-519.

15-74-305. Measurement, accounting, etc., of gas sold or delivered by volume.

(a) Each and every sale and each and every purchase, delivery, and receipt of gas by volume made in this state, for which any accounting for the price paid or received for the gas so sold, purchased, delivered, or received must be made to an oil and gas lease owner, royalty owner thereunder, or other mineral interest owner, shall be made and the gas shall be measured, calculated, purchased, delivered, and accounted for on the basis of “a standard cubic foot of gas” as defined in § 15-74-302, and as determined under this subchapter. Whenever the provisions of this subchapter operate to change the basis of measurement provided for in existing contracts, then the price for gas, including royalty gas, provided for in such contracts shall, if either the purchaser or seller so desires, be adjusted to compensate for the change in the method of measuring the volume of gas delivered thereunder. This provision is intended to protect parties to contracts now in existence so that after this statute becomes effective the total amount of money paid for a volume of gas purchased or required to be accounted for under existing contracts shall remain unaffected by this subchapter.

(b) Nothing in this section shall affect or apply to purchases or sales made on any basis other than a volume basis.

(c) Any person, association of persons, or corporation who, as purchaser thereof, shall knowingly fail or refuse to so measure, calculate, or account for any gas so purchased, shall be subject to a penalty of not less than ten dollars (\$10.00) nor more than five hundred dollars (\$500) for each offense recoverable in the name of the state in the Pulaski County Circuit Court and each day of the violation shall constitute a separate offense.

(d) Nothing herein shall prevent any aggrieved party from maintaining a civil suit for damages in the county or counties in which the gas is produced.

History. Acts 1951, No. 214, § 5; A.S.A. 1947, § 53-520.

SUBCHAPTER 4 — TESTS AND INSPECTIONS

SECTION.

- 15-74-401. Penalty.
- 15-74-402. Rules and regulations.
- 15-74-403. Limit on inspectors' interest in oil and gas sale or manufacture — Appropriation of fluids.
- 15-74-404. Specifications for fuels and oils.
- 15-74-405. Condemnation of gasoline — Placards — Hose inspection.

SECTION.

- 15-74-406. Penalty for removing or altering placards.
- 15-74-407. Prohibition on sale or use of certain fluids for illumination or heating.
- 15-74-408. Inspection of dealer records.
- 15-74-409. Oil or gasoline testing prior to sale.
- 15-74-410. Records of inspections — Disposition of funds.

Cross References. Uniform Weights and Measures Law, § 4-18-301 et seq.

Effective Dates. Acts 1933, No. 134, § 15: Mar. 24, 1933. Emergency clause provided: "Whereas the present law relative to the inspection of petroleum products is not susceptible of full and complete enforcement; and whereas the rigid enforcement of said law is necessary to the public welfare, an emergency is hereby declared and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1965, No. 493, § 10: Mar. 20, 1965. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas: (a)

that traffic accidents resulting in injuries and deaths of persons and damages to property are increasing at an alarming rate; (b) that present revenues for employment of personnel in the Department of Arkansas State Police are wholly inadequate to properly handle the problem of highway safety; and (c) that only the provisions of this act will tend to provide funds in amounts sufficient to employ the necessary personnel to patrol the highways and thereby reduce the incidence of highway accidents. Therefore an emergency is hereby declared to exist, and this act being necessary for the preservation of public peace, health and safety shall take effect and be in full force on and after its passage and approval."

RESEARCH REFERENCES

Am. Jur. 38 Am. Jur. 2d, Gas & O., §§ 152, 153.

15-74-401. Penalty.

(a) A dealer shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500), if that dealer:

(1) Offers for sale any of the oils or fluids mentioned in this subchapter which:

(A) Have not been tested; or

(B) Having been tested, fail to comply with the specifications set out in this subchapter; or

(2) Fails to comply with all the requirements of any section of this subchapter or rules and regulations promulgated by the Director of the Department of Finance and Administration under authority of this subchapter.

(b) However, the director, or any of his or her deputies or inspectors, shall have the power to compromise the penalty herein fixed by imposing the penalty as the merits of the case demand.

History. Acts 1933, No. 134, § 12; Pope's Dig., § 10459; A.S.A. 1947, § 53-612.

15-74-402. Rules and regulations.

The Director of the Department of Finance and Administration shall have authority to promulgate such rules and regulations in regard to the enforcement of this subchapter as shall not be inconsistent with the provisions of the subchapter which in his or her judgment will best serve to carry out the purpose thereof.

History. Acts 1933, No. 134, § 11; Pope's Dig., § 10458; A.S.A. 1947, § 53-611.

15-74-403. Limit on inspectors' interest in oil and gas sale or manufacture — Appropriation of fluids.

No inspector or deputy, while in office, shall:

(1) Be interested, directly or indirectly, in the manufacture or sale of any of the oils or gasoline specified in this subchapter; or

(2) For the purpose of inspection, testing, or gauging the same, take away or appropriate for his or her own use, or for the use of others, any part or portion of the oils or fluids.

History. Acts 1933, No. 134, § 10; Pope's Dig., § 10457; A.S.A. 1947, § 53-610.

15-74-404. Specifications for fuels and oils.

No article or commodity shall be sold or offered for sale in the State of Arkansas as gasoline, motor vehicle fuel, special motor vehicle fuel, illuminating oils, or heating oils unless it shall conform to specifications as follows:

(1) The fuels mentioned above shall be free from water and suspended matter;

(2) The corrosion test shall be that method prescribed by current American Society for Testing and Materials method or such other test as may be prescribed by the Arkansas Bureau of Standards;

(3) The method of testing distillation and the distillation range used in such testing of the petroleum products mentioned above shall be as prescribed by current American Society for Testing and Materials standards or as prescribed by the bureau;

(4) The tests required herein shall be made by the refiners, manufacturers, or blenders of gasoline, motor vehicle fuels, illuminating oils, or heating oils sold or offered for sale in the State of Arkansas; and where shipment is by rail or water transportation, the bill of lading for each shipment shall state that the product meets the American Society for Testing and Materials standards set forth herein. Where shipment is by truck or other vehicle, the invoice for each shipment shall state that the product meets the American Society for Testing and Materials standards set forth herein. The bill of lading must show the destination of the shipment. When any inspector of the bureau is in doubt as to the correctness of the statement attached to the bill of lading or invoice, he or she may procure a sample of the petroleum product in question and send the sample to the bureau;

(5) The bureau, upon receipt of the sample, shall further test the sample or cause the sample to be tested and the result of the test shall be final; and

(6) Such other specifications shall be met and tests performed as required by the American Society for Testing and Materials or as prescribed by the bureau.

History. Acts 1933, No. 134, § 1; Pope's Dig., § 10448; Acts 1941, No. 380, § 1; 1955, No. 124, § 1; 1977, No. 346, § 1; A.S.A. 1947, § 53-601.

Publisher's Notes. Acts 1993, Nos. 610 and 624, § 1, provided: "The Arkansas Bureau of Standards, created by Act

482 of 1963, as amended, the same being A.C.A. 4-18-201 et seq., and its functions, powers, duties, assets, properties, and appropriations are transferred by a type 2 transfer [see § 25-2-105] to the State Plant Board."

15-74-405. Condemnation of gasoline — Placards — Hose inspection.

(a) Where inspectors find gasoline being sold or offered for sale by any dealer that does not meet the specifications as set out in this subchapter, they must condemn the gasoline and affix to gasoline pumps the following placards as the occasion requires: "THIS GASOLINE DOES NOT MEET ARKANSAS SPECIFICATIONS AND HAS BEEN CONDEMNED, STATE OF ARKANSAS"; "THIS GASOLINE IS CORROSIVE, STATE OF ARKANSAS"; "THIS GASOLINE CONTAINS DIRT AND OTHER SUSPENDED MATTER, STATE OF ARKANSAS"; or "THIS GASOLINE CONTAINS WATER, STATE OF ARKANSAS".

(b) In addition to affixing the placards on the pumps, the inspector must immediately file information with the proper authorities and prosecute the dealer for this violation.

(c) As long as placards remain on the pumps, contents of the tanks to which the pump is connected shall be removed only through the pump bearing the placards.

(d) Placards shall be removed only by authorized inspectors.

(e) Placards must:

(1) Be at least one foot (1') square;

(2) Have a white background with red letters; and

(3) Be easily readable from a distance of twenty feet (20'). At least two (2) placards must be sealed directly on each pump dispensing the illegal gasoline.

(f) Where suspended matter is found in gasoline, the hose must be examined and, if found defective, must be replaced before that pump can be used again.

History. Acts 1933, No. 134, § 2; Pope's Dig., § 10449; A.S.A. 1947, § 53-602.

15-74-406. Penalty for removing or altering placards.

The removing, altering, disfiguring, or defacing of any placard or any part thereof shall be treated as a misdemeanor. Any person, firm, or corporation guilty of that misdemeanor shall be fined in a sum not more than five hundred dollars (\$500) nor less than fifty dollars (\$50.00).

History. Acts 1933, No. 134, § 3; Pope's Dig., § 10450; A.S.A. 1947, § 53-603.

15-74-407. Prohibition on sale or use of certain fluids for illumination or heating.

No oils or fluids which ignite or burn at any temperature less than that established by the current American Society for Testing and Materials standards or such other standards as the Arkansas Bureau of Standards may establish shall be offered for sale or used for illuminating or heating purposes within the state. However, it shall be lawful to offer for sale or sell any of the fluids to be used for illuminating or heating purposes within this state in the form of vapor or gas, and to use the fluids for those purposes regardless of the flash point.

History. Acts 1933, No. 134, § 4; Pope's Dig., § 10451; Acts 1977, No. 346, § 2; A.S.A. 1947, § 53-604.

Publisher's Notes. Acts 1993, Nos. 610 and 624, § 1, provided: "The Arkansas Bureau of Standards, created by Act

482 of 1963, as amended, the same being A.C.A. 4-18-201 et seq., and its functions, powers, duties, assets, properties, and appropriations are transferred by a type 2 transfer [see § 25-2-105] to the State Plant Board."

CASE NOTES

Noncompliance.

Oil company held negligent and liable

for damages where liquid sold as kerosene exploded at lower temperature than that

required by this section. Sinclair Ref. Co. v. Piles, 215 Ark. 469, 221 S.W.2d 12 (1949).

15-74-408. Inspection of dealer records.

The person, firm, or corporation who receives motor vehicle fuel must keep in his or her possession and file in an orderly manner statements showing distillation tests, bills of lading, or invoices, as the case may be, covering each quantity received, and those items are to be subject to inspection by the Director of the Department of Finance and Administration or his or her authorized agents.

History. Acts 1933, No. 134, § 7; Pope's Dig., § 10454; A.S.A. 1947, § 53-607.

Publisher's Notes. Acts 1975 (Extended Sess., 1976), No. 1150, § 3, transferred from the Department of Finance and Administration — Division of Revenue to the Department of Commerce — Weights and Measures Division, all authority and responsibility pertaining to the inspection of certain petroleum products which was not vested in the Division of Revenue.

Acts 1983, No. 691, § 14, provided, in part, that the Division of Weights and

Measures, and all the powers, functions, and duties performed by it, were separated from the Department of Commerce and would thereafter be known as the Arkansas Bureau of Standards.

Acts 1993, Nos. 610 and 624, § 1, provided: "The Arkansas Bureau of Standards, created by Act 482 of 1963, as amended, the same being A.C.A. 4-18-201 et seq., and its functions, powers, duties, assets, properties, and appropriations are transferred by a type 2 transfer [see § 25-2-105] to the State Plant Board."

15-74-409. Oil or gasoline testing prior to sale.

(a) Whenever any person, firm, or corporation shall receive any of the oils or gasoline mentioned in this subchapter that has not been tested under the laws of this state, it shall be his or her or its duty to:

(1) Cause to be tested, or test, the oils or gasoline as provided in this subchapter before the oils or gasoline are offered for sale;

(2) Pay the same fee as is provided in this subchapter.

(b) In order to comply with the requirements of this section, the inspectors or deputies, when called upon, as soon as practicable, shall test or cause to be tested the petroleum oils mentioned in the subchapter.

(c) When any person, firm, or corporation shall receive within this state any of the petroleum oils mentioned in this subchapter for the different purposes mentioned in this subchapter, he or she shall at once notify the Director of the Department of Finance and Administration, or one (1) of his or her deputies or inspectors, of the quantity of the oils received and request the inspection of the oils. If for any reason the deputies or inspectors are not able to promptly test the petroleum oils, the person, firm, or corporation, or any authorized agent thereof, may subject the products of petroleum to the test prescribed by the provisions of this subchapter, and on furnishing the director, or any deputy or inspector, an affidavit that the oils have been subjected to and have met the requirements of the test prescribed by this subchapter, he or she shall be entitled to receive from the director, or deputy or inspector,

a certificate showing that the test has been made. The person, firm, or corporation, or any duly authorized agent thereof, may then sell or offer for sale the oils.

History. Acts 1933, No. 134, § 8; Pope’s Dig., § 10455; A.S.A. 1947, § 53-608.

Publisher’s Notes. As to transfer of

inspection responsibilities, see Publisher’s Notes to §. 15-74-408.

15-74-410. Records of inspections — Disposition of funds.

- (a) The Director of the Department of Finance and Administration, or his or her deputies or inspectors, whose duty it is to enforce this subchapter, shall keep a correct record of all oils and fluids inspected by them in a book provided for by the state for that purpose. They shall have the power to make any necessary investigation to determine whether or not any oils have been inspected before being offered for sale.
- (b) The director, his or her deputies, or his or her inspectors, shall have the right to administer oaths and inspect any and all records having reference to the receiving, forwarding, transportation, or sale of any oils or fluids.
- (c) All records kept by the director, or his or her deputies or inspectors, pertaining to the inspection of oils and fluids mentioned in this subchapter shall be open to the inspection of any interested party.

History. Acts 1933, No. 134, § 9; Pope’s Dig., § 10456; Acts 1965, No. 493, § 6; A.S.A. 1947, § 53-609.

Publisher’s Notes. Acts 1965, No. 493, § 7, provided that moneys collected under

the provisions of the act, beginning with the first day of the month in which the act became effective would be credited to the several funds enumerated in the act.

SUBCHAPTER 5 — PRICING

SECTION.	
15-74-501. Prohibition against discrimination in purchase price of crude oil from different pools.	commissioned agents to purchase business according to Department of Energy fuel allocation — Contracts.
15-74-502. Prohibition against requiring	

Preambles. Acts 1977, No. 647 contained a preamble which read: “Whereas, it has been a standard practice of major oil companies to market their products through commissioned agents; and
“Whereas, many major oil companies today are seeking to force commissioned agents to purchase their fuel allocation as a condition of becoming, or continuing as,

a commissioned agent to sell the products of such major oil company; and
“Whereas, the efforts of major oil companies to require a commissioned agent to purchase their fuel allocation from the major oil company is contrary to the welfare of the public of this state;
“Now, therefore....”

RESEARCH REFERENCES

Am. Jur. 38 Am. Jur. 2d, Gas & O.,
§§ 152, 153.

15-74-501. Prohibition against discrimination in purchase price of crude oil from different pools.

(a)(1) Any person engaged in the business of buying any crude oil for manufacture or sale thereof, who shall discriminate between different pools of crude oil in this state by purchasing crude oil at a lower price in one (1) pool than is paid for crude oil of the same kind, quality, and grade by that person in another pool after making due allowance for the difference, if any, in the reasonable cost of transportation from the locality of purchase to the locality of manufacture or sale, shall be deemed guilty of unfair discrimination, which is prohibited and declared to be unlawful.

(2) Provided, however, any person engaged in the business of buying any crude oil for the manufacture or sale thereof shall not be guilty of unfair discrimination if such person is responding to or competing with or matching prices offered by other purchasers of crude oil for manufacture or sale thereof.

(b) Any person who shall be convicted of unfair discrimination, as defined by this section:

(1) Shall be fined for each offense not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000); and

(2) Shall be enjoined, upon the application of the State of Arkansas or any person injured by that discrimination, from engaging directly or indirectly in the business of purchasing any such commodities.

(c) Any person injured by that discrimination shall recover treble the amount of his or her damages resulting from that unfair discrimination, and the costs and expenses of the litigation, including a reasonable attorney's fee to be fixed by the court.

(d) As used in this section:

(1) "Person" means any individual, firm, corporation, partnership, association, trustee, receiver, or assignee for the benefit of creditors;

(2) "Pool" shall have the same meaning as that term is defined and used in §§ 15-71-101 — 15-71-112, 15-72-101 — 15-72-110, 15-72-205, 15-72-212, 15-72-216, 15-72-301 — 15-72-324, and 15-72-401 — 15-72-407.

(e) The provisions hereof shall be held cumulative of each other and of all other laws in any way affecting them now in force in this state.

History. Acts 1973, No. 304, §§ 1-4;
A.S.A. 1947, §§ 53-521 — 53-524; Acts
1991, No. 133, § 1.

15-74-502. Prohibition against requiring commissioned agents to purchase business according to Department of Energy fuel allocation — Contracts.

(a) It shall be unlawful for any major oil company to require or seek to require a commissioned agent of the products of the major oil company to:

(1) Purchase the oil business at a price in which the major oil company has used the Department of Energy fuel allocation assigned to the commissioned agent as a formula or factor to be considered in determining the price at which the major oil company offers to sell the oil business to the commissioned agent; or

(2) Require or attempt to require a commissioned agent of the products of the major oil company to purchase, or to pay an extra price or premium to obtain, their Department of Energy fuel allotment or allocation from the major oil company.

(b) Any contract by which a major oil company requires or seeks to require a commissioned agent of the products of the major oil company to purchase or make payment for their fuel allocation shall be void to the extent that the contract requires the payment and shall be unenforceable in the courts of this state as against public policy. Provided, nothing in this section shall be deemed to prohibit the major oil companies from charging commissioned agents the regular price at which the major oil companies make fuel available to commissioned agents for sale or distribution in this state.

(c)(1) Any major oil company violating the provisions of this section shall be guilty of a Class A misdemeanor and upon conviction shall be punished in the manner provided by law.

(2) Each contract or transaction in violation of the provisions of this section shall be a separate offense and shall be punishable accordingly.

History. Acts 1977, No. 647, §§ 1, 2; A.S.A. 1947, §§ 53-614, 53-615.

SUBCHAPTER 6 — PROCEEDS OF SALE GENERALLY

- SECTION.
15-74-601. Time limits governing oil and gas payments.
15-74-602. Fraudulently withholding payments.
15-74-603. Action for nonpayment of proceeds.

- SECTION.
15-74-604. Failure to pay royalties.
15-74-605. Sale of proportionate share of production.

A.C.R.C. Notes. References to “this subchapter” in §§ 15-74-601 — 15-74-604 may not apply to § 15-74-605 which was

enacted subsequently.
Effective Dates. Acts 1981, No. 269, § 2: July 1, 1981.

RESEARCH REFERENCES

Am. Jur. 38 Am. Jur. 2d, Gas & O., § 189 et seq.

Ark. L. Notes. Norvell, Lateness or Nonpayment of Oil and Gas Royalty in Arkansas, Etc., 1987 Ark. L. Notes 52.

C.J.S. 58 C.J.S., Mines, § 213 et seq.

U. Ark. Little Rock L.J. Arkansas Law Survey, Scroggins, Property, 9 U. Ark. Little Rock L.J. 199.

Wright, The Arkansas Law of Oil and Gas, 10 U. Ark. Little Rock L.J. 5.

CASE NOTES

Penalty.

Where payment to the bank came much later than six months after the date of first sale, the date of delivery of gas, the penalty was properly assessed. TXO Prod.

Corp. v. First Nat'l Bank, 288 Ark. 338, 705 S.W.2d 423 (1986).

Cited: TXO Prod. Corp. v. Page Farms, Inc., 287 Ark. 304, 698 S.W.2d 791 (1985).

15-74-601. Time limits governing oil and gas payments.

(a) The proceeds derived from the sale of oil or gas production from any oil or gas well shall be paid to persons legally entitled thereto, commencing no later than six (6) months after the date of first sale and thereafter no later than sixty (60) days after the end of the calendar month within which subsequent production is sold.

(b)(1) The payment is to be made to persons entitled thereto by the first purchasers of the production.

(2) The payment may be made annually for the aggregate of up to twelve (12) months of accumulation of proceeds if the aggregate amount owed is one hundred dollars (\$100) or less.

(c) As used in this subchapter, "first purchaser" means the first commercial purchaser after completion of the well and shall not include purchasers of oil or gas during initial testing prior to completion.

(d) Any delay in determining the persons legally entitled to an interest in the proceeds from production caused by unmarketable title to the interest shall not affect payments to persons whose title is marketable.

(e) When payment has not been made within the time limits specified in this subchapter, the first purchaser shall pay interest to those legally entitled to the withheld proceeds commencing on the payment due date at the rate of twelve percent (12%) per annum on the nonpaid amounts unless a different rate of interest is specified in a written agreement between the payor and the payee.

(f) The first purchaser shall be exempt from the provisions of this subchapter, and the owner of the right to drill and to produce under an oil and gas lease or force pooling order shall be substituted for the first purchaser therein when the owner and purchaser have entered into arrangements in which the proceeds are paid by the purchaser to the owner, who assumes the responsibility of paying the proceeds to persons legally entitled thereto.

History. Acts 1981, No. 269, § 1; 1983, No. 448, § 1; A.S.A. 1947, § 53-525; Acts 2003, No. 276, § 1.

Cross References. Partition, execution of lease, and evidence, § 15-73-407.

CASE NOTES

Penalty.

Where company made timely payments on leases for oil, gas, and brine, but mistakenly made the payments to the wrong person, trial court correctly refused to award penalty and attorney's fee to the

prevailing party legally entitled to the payments. *Atlanta Exploration, Inc. v. Ethyl Corp.*, 301 Ark. 331, 784 S.W.2d 150 (1990).

Cited: *SEECO, Inc. v. Hales*, 330 Ark. 402, 954 S.W.2d 234 (1997).

15-74-602. Fraudulently withholding payments.

(a) If the first purchaser, or owner of the right to drill and produce substituted for the first commercial purchaser as provided in this subchapter, violates this subchapter by willfully withholding payments without just cause or through bad faith from persons legally entitled to the proceeds from production, the court may award, in addition to the unpaid amount of proceeds and interest as provided in § 15-74-601, a penalty in an amount not to exceed simple interest at a rate of fourteen percent (14%) per annum on the amount of the unpaid proceeds from the due date as provided in § 15-74-601 and a reasonable attorney's fee.

(b) The terms of this section shall not be applicable to any producing unit or well that produces liquid hydrocarbons only, or liquid hydrocarbons associated with the production of gas, or gas produced associated with the production of liquid hydrocarbons.

History. Acts 1981, No. 269, § 1; 1983, No. 448, § 1; A.S.A. 1947, § 53-525; Acts 1987, No. 94, §§ 2, 4.

CASE NOTES

Cited: *SEECO, Inc. v. Hales*, 330 Ark. 402, 954 S.W.2d 234 (1997).

15-74-603. Action for nonpayment of proceeds.

(a) Any court of competent jurisdiction of the county in which the oil or gas well is located shall have jurisdiction over all proceedings brought pursuant to this subchapter.

(b) If persons legally entitled to the proceeds seek relief for the failure of the purchaser to make timely payment of proceeds from the sale of oil or gas or interest thereon as required in §§ 15-74-601 and 15-74-602, the first purchaser or the owner of the right to produce under an oil or gas lease or force pooling order shall be furnished with written notice of the failure as a prerequisite to commencing judicial action for the nonpayment.

(c) The first purchaser shall have thirty (30) days after receipt of the required notice within which to pay proceeds or to respond in writing with a reasonable basis for nonpayment.

(d) If the court is satisfied that payments have not been willfully withheld without just cause or through bad faith, the penalty provisions of § 15-74-602 shall not apply to the withholding of the payments.

(e) In the event of willful nonpayment, or in the event the court finds there was a complete absence of a justiciable issue of either law or fact raised by the losing party or his or her attorney, the court shall award an attorney's fee in an amount not to exceed five thousand dollars (\$5,000) or ten percent (10%) of the amount in controversy, whichever is less, to the prevailing party unless a voluntary dismissal is filed, or the pleadings are amended as to any nonjusticiable issue within a reasonable time after the attorney or party filing the dismissal or the amended pleadings knew, or reasonably should have known, that he or she would not prevail.

(f) The terms of this section shall not be applicable to any producing unit or well that produces liquid hydrocarbons only, or liquid hydrocarbons associated with the production of gas, or gas produced associated with the production of liquid hydrocarbons.

History. Acts 1981, No. 269, § 1; 1983, No. 448, § 1; A.S.A. 1947, § 53-525; Acts 1987, No. 94, §§ 3, 4.

CASE NOTES

ANALYSIS

Penalty.

Prejudgment Interest.

Penalty.

Where company made timely payments on leases for oil, gas, and brine, but mistakenly made the payments to the wrong person, trial court correctly refused to award penalty and attorney's fee to the prevailing party legally entitled to the payments. *Atlanta Exploration, Inc. v.*

Ethyl Corp., 301 Ark. 331, 784 S.W.2d 150 (1990).

Prejudgment Interest.

Where company made timely payments on leases for oil, gas, and brine, but mistakenly made payments to the wrong person, party legally entitled to the payments was entitled to prejudgment interest in an action to collect past royalties. *Atlanta Exploration, Inc. v. Ethyl Corp.*, 301 Ark. 331, 784 S.W.2d 150 (1990).

15-74-604. Failure to pay royalties.

(a) An obligation arises under an oil and gas lease to pay or to deliver oil or gas royalties to the mineral owner or his or her assignee or to deliver oil or gas to a purchaser to the credit of the mineral owner or his or her assignee, and willful breach by the owner of the right to drill and produce of the obligation may authorize, among other relief, cancellation of the lease where determined, by the court, that the equities of the case warrant cancellation.

(b) In the event the operator under an oil or gas lease fails to pay oil or gas royalties to the mineral owner or his or her assignee within one

hundred eighty (180) days after oil or gas produced under the lease is marketed, the unpaid royalties shall bear interest thereafter at the rate of twelve percent (12%) per annum until paid. Provided, that the operator may remit annually to a person entitled to royalties the aggregate of up to twelve (12) months of monthly royalties where the aggregate amount owed is one hundred dollars (\$100) or less. This subchapter shall not apply when mineral owners or their assignees elect to take their proportionate share of production in kind or in the event of unmarketability of title which would affect substantially the making of the royalty payments.

(c) A prior first lien is created to the extent of any unpaid royalty, together with any interest or penalty thereon, granted or reserved in any valid instrument to secure the owner of the royalty interest, his or her heirs, devisees, successors, or assigns.

(d) When payment has not been made upon any natural gas production within the time limits specified in § 15-74-601, the first purchaser shall, upon suit being filed, suspend all royalty payments the subject of the litigation due under the lease interest to the owner of the right to drill and produce, provided that the first purchaser is made a party to the suit, and thereafter shall pay the amounts due all such royalty interests, as the amounts become due, into the registry of the court in which the suit is pending and the first purchaser shall be relieved of all further burdens or obligations therefor.

History. Acts 1981, No. 269, § 1; 1983, No. 448, § 1; 1985 (1st Ex. Sess.), No. 39, § 1; 1985 (1st Ex. Sess.), No. 41, §§ 1, 2; A.S.A. 1947, § 53-525; Acts 2009, No. 1175, § 17.

Amendments. The 2009 amendment substituted "one hundred dollars (\$100)" for "twenty-five dollars (\$25.00)" in (b).

15-74-605. Sale of proportionate share of production.

(a) For any gas well completed as a commercially productive well subsequent to the passage of this section, the party designated as operator of the well shall sell, and the operator's first purchaser shall purchase, the gas production attributable to the interest of any party who participated in any part of the costs and expenses of the well and who:

- (1) Is not regularly engaged in the oil and gas business;
- (2) Owns no more than a five percent (5%) mineral interest in the well;
- (3) Is not an individual in the oil and gas industry;
- (4) Has made a reasonable good faith attempt to obtain a market for or contract covering its proportionate share of production from the well and can demonstrate those efforts by objective evidence, such as letters from purchasers, but has failed to obtain a market or contract;
- (5) Agrees to pay a proportionate share of any costs associated with the construction of a pipeline which is to be or has been constructed to facilitate the marketing of production from the well and, in addition thereto, if the costs of the pipeline have been previously invoiced,

simple interest at the maximum rate provided by law on the proportionate share to be paid by a party electing under this section from the due date of the invoices;

(6) Makes a written election under this section, which is received by the operator within sixty (60) days of the date of first sales of production by the operator;

(7)(A) Agrees to pay to the operator a reasonable administrative and overhead charge for the initial setup of the necessary accounts and procedures and for operator's administration and oversight of monthly sales under this section.

(B) However, the operator shall charge a monthly fee if a party electing under this section desires to receive monthly revenue checks or an annual fee if the party desires to receive revenues only on an annual basis;

(8) Agrees to indemnify and hold harmless the operator and its first purchaser for any inadvertent error or omission which may occur in the administration hereof; and

(9) Agrees to be bound by the terms and conditions of the operator's contract with its first purchaser until the contract terminates or production from the well ceases, whichever is earlier.

(b) In the event that a new party should be designated as operator of the well, subsequent to any election made under this section, the proportionate share of production of any party who avails itself of the benefits of this section shall remain subject to, and be sold pursuant to, the terms and conditions of the contract of the initial operator.

History. Acts 1987, No. 93, § 1.

A.C.R.C. Notes. References to "this subchapter" in §§ 15-74-601 — 15-74-604 may not apply to this section which was enacted subsequently.

Publisher's Notes. In reference to the term "passage of this section," Acts 1987, No. 93 was signed by the Governor on Feb. 27, 1987, and became effective on July 20, 1987.

SUBCHAPTER 7 — ROYALTIES

SECTION.

15-74-701. Penalty.

15-74-702. Royalties paid in lieu of drilling off-set wells on adjacent units.

15-74-703. Entitlement of royalty interests to premiums and bonuses.

15-74-704. Paying part of production cost or giving bonus or premium without paying share to royalty interest.

15-74-705. Purchaser's price for royalty gas.

SECTION.

15-74-706. Contracting to buy royalty gas for less than price paid operator or lessee.

15-74-707. Time of royalty payment — Monthly statements to royalty owner.

15-74-708. Forfeiture of lease upon lessee receiving more than share from sale — Purchaser to pay treble value.

15-74-709. Default or delinquency by lessees or others responsible for payment of royalties.

A.C.R.C. Notes. References to "this subchapter" in §§ 15-74-701 — 15-74-708 may not apply to § 15-74-709 which was enacted subsequently.

Cross References. Royalty interests of life tenant and remaindermen, § 15-73-304.

Severance tax deducted from royalty, § 26-58-115.

Effective Dates. Acts 1929, No. 222, § 8: approved Mar. 27, 1929. Emergency clause provided: "This act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared and this act shall take effect from and after its passage."

Acts 1939, No. 348, § 3: approved Mar. 16, 1939. Emergency clause provided: "That many royalty owners in this state are being deprived of participation in wells which should be drilled and there is much confusion existing by reason of the

present situation, and for this reason an emergency exists. This act being necessary for the immediate preservation of public peace, health and safety, shall be in full force and effect from and after its passage."

Acts 1991, No. 166, § 5: Feb. 18, 1991. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that current law does not adequately address complaints from oil and gas royalty owners; and that this Act is immediately necessary to provide oil and gas royalty owners a reasonable procedure for addressing the complaints and obtaining relief. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

ALR. Determining market value or market price in oil and gas lease requiring royalty to be paid on standard measured by such terms. 10 A.L.R.4th 732.

Am. Jur. 38 Am. Jur. 2d, Gas & O., § 189 et seq.

Ark. L. Rev. Note, Hillard v. Stephens: Interpretation of Market Price Royalty Provisions in Natural Gas Leases, 36 Ark. L. Rev. 312.

Norvell, Pitfalls in Developing Lands Burdened by Non-Participating Royalty: Calculating the Royalty Share and Coexisting with the Duty Owed to the Non-Participating Royalty Owner by the Executive Interest, 48 Ark. L. Rev. 933.

C.J.S. 58 C.J.S., Mines, § 213 et seq.

U. Ark. Little Rock L.J. Wright, The Arkansas Law of Oil and Gas, 10 U. Ark. Little Rock L.J. 5.

15-74-701. Penalty.

Any person willfully or maliciously violating any of the provisions of this subchapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

History. Acts 1929, No. 222, § 7; A.S.A. 1947, § 53-515.

15-74-702. Royalties paid in lieu of drilling off-set wells on adjacent units.

Where royalties are paid in lieu of drilling off-set wells on forty-acre units adjacent to forty-acre units already in production, the forty-acre units adjacent to the forty-acre unit receiving the royalty payments shall immediately after the signing of the agreement or contract become

off-set units, and drilling operations shall begin on each adjacent forty-acre off-sets, to the forty-acre unit receiving royalty payments in lieu of drilling the well in not less than ninety (90) days thereafter.

History. Acts 1939, No. 348, § 1; A.S.A. 1947, § 53-508.

15-74-703. Entitlement of royalty interests to premiums and bonuses.

All purchasers of oil and gas shall pay to the royalty interest the same premium or bonus above the posted market price for oil or gas they pay to the leaseholder or working interest under any oil, gas, or mineral lease on lands from which oil or gas may be purchased under contract with the lease owner or operator.

History. Acts 1929, No. 222, § 1; Pope's Dig., § 10498; A.S.A. 1947, § 53-509.

15-74-704. Paying part of production cost or giving bonus or premium without paying share to royalty interest.

It shall be unlawful for any purchaser of oil or gas to enter into any contract with any lessee or operator under any oil, gas, or mineral lease, whereby the purchaser undertakes to pay any of the cost or expense of operation or production, steaming, treating, or running oil or gas or any other bonus or premium under any name or subterfuge whatsoever, without providing for paying to the royalty interest its proportionate share according to interest therein.

History. Acts 1929, No. 222, § 2; Pope's Dig., § 10499; A.S.A. 1947, § 53-510.

15-74-705. Purchaser's price for royalty gas.

It shall be the duty of both the lessee, or his or her assignee, and any pipeline company, corporation, or individual contracting for the purchase of oil or gas under any oil, gas, or mineral lease to protect the royalty of the lessor's interest by paying to the lessor or his or her assignees the same price, including premiums, steaming charges, and bonuses of whatsoever name for royalty oil or gas that is paid the operator or lessee under the lease for the working interest thereunder.

History. Acts 1929, No. 222, § 3; Pope's Dig., § 10500; A.S.A. 1947, § 53-511.

RESEARCH REFERENCES

Ark. L. Rev. Note, Klein v. Jones: Equitable Right to Royalties on Take-or-Pay Settlements, 47 Ark. L. Rev. 749.

CASE NOTES

ANALYSIS

Fixed Price Leases.

Take-or-Pay Settlements.

Fixed Price Leases.

Fixed price royalty clauses in gas leases are valid and are neither prohibited nor converted into proceeds clauses by this section or § 15-74-708. *Hillard v. Stephens*, 276 Ark. 545, 637 S.W.2d 581 (1982); *Taylor v. Arkansas La. Gas Co.*, 604 F. Supp. 779 (W.D. Ark. 1985), *aff'd*, *Taylor v. Arkansas Louisiana Gas Co.*, 793 F.2d 189 (8th Cir. 1986).

Fixed price royalty clauses do not violate this section and are not converted by

this section into proceeds clauses; therefore, the lessor under oil and gas leases which contained fixed price royalty clauses was not entitled to cancel the fixed price leases and obtain treble damages under § 15-74-708. *Taylor v. Arkansas Louisiana Gas Co.*, 793 F.2d 189 (8th Cir. 1986).

Take-or-Pay Settlements.

Take-or-pay or other contract settlements are royalty-bearing under this section even if they are not specifically tied to gas production. *SEECO, Inc. v. Hales*, 341 Ark. 673, 22 S.W.3d 157 (2000).

Cited: *Klein v. Jones*, 980 F.2d 521 (8th Cir. 1992).

15-74-706. Contracting to buy royalty gas for less than price paid operator or lessee.

It shall be unlawful for any pipeline company, corporation, or individual purchasing oil or gas from the operator or lessee of any oil, gas, or mineral lease to enter into any contract with the operator or lessee whereby the purchaser acquires the royalty oil or gas reserved in the oil, gas, or mineral lease for any price less than the price paid the operator or lessee of the lease.

History. Acts 1929, No. 222, § 4; Pope's Dig., § 10500; A.S.A. 1947, § 53-512.

15-74-707. Time of royalty payment — Monthly statements to royalty owner.

(a) It shall be the duty of any purchaser of oil or gas to pay the royalty interest at the same time it pays the lessee or producer. However, the parties may expressly waive the time and manner of payment in writing.

(b) The purchaser shall at some time not later than the twelfth day of each month furnish each royalty owner with a statement showing the correct amount of oil or gas purchased during the previous month together with the correct amount paid each in interest therefor.

History. Acts 1929, No. 222, § 5; Pope's Dig., § 10501; A.S.A. 1947, § 53-513.

15-74-708. Forfeiture of lease upon lessee receiving more than share from sale — Purchaser to pay treble value.

(a) Any leaseholder or operator who contracts for the sale of gas or oil to any pipeline company or other purchaser, under and by virtue of the terms of which the lessee receives a greater amount than the royalty

owners in proportion to interest therein, or receives a bonus, or by any other means conspires with a purchaser to receive from the sale of the oil and gas more than his or her just proportionate share therefrom shall forfeit his or her rights in and to the leasehold premises.

(b) Any pipeline company or other purchaser of oil and gas who contracts with any lessee as set out in subsection (a) of this section to the injury of the royalty owners shall forfeit to the royalty owners treble value of the amount of oil or gas runs thus wrongfully taken from the royalty interest.

History. Acts 1929, No. 222, § 6; Pope's Dig., § 10502; A.S.A. 1947, § 53-514.

CASE NOTES

ANALYSIS

Fixed Price Leases.
Treble Damages.

Fixed Price Leases.

Fixed price royalty clauses in gas leases are valid and are neither prohibited nor converted into proceeds clauses by § 15-74-705 or this section. *Taylor v. Arkansas La. Gas Co.*, 604 F. Supp. 779 (W.D. Ark. 1985), *aff'd*, *Taylor v. Arkansas Louisiana Gas Co.*, 793 F.2d 189 (8th Cir. 1986).

Fixed price royalty clauses do not violate § 15-74-705 and are not converted by that section into proceeds clauses; therefore, the lessor under oil and gas leases

which contained fixed price royalty clauses was not entitled to cancel the fixed price leases and obtain treble damages under this section. *Taylor v. Arkansas Louisiana Gas Co.*, 793 F.2d 189 (8th Cir. 1986).

Treble Damages.

This section could not be invoked to compel purchaser of oil to forfeit treble the value of the royalty when the purchaser and the lessee acted in good faith upon a mistaken assumption and nothing indicated a conspiracy. *Dobson v. Arkansas Oil & Gas Comm'n*, 218 Ark. 160, 235 S.W.2d 33 (1950).

Cited: *Hillard v. Stephens*, 276 Ark. 545, 637 S.W.2d 581 (1982).

15-74-709. Default or delinquency by lessees or others responsible for payment of royalties.

(a)(1) The Oil and Gas Commission is hereby authorized to receive and investigate complaints of oil and gas royalty owners that their lessees or others responsible for the payment of royalty are in default of their lease agreements, orders of the commission, or the requirements of law with respect thereto, and to conduct hearings thereon pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(2) After any such hearing, the commission may order the party or parties found responsible for the default that has resulted in the nonpayment or untimely or insufficient payment of royalty, herein called "delinquency", to pay to such owner within such time as the commission deems just and equitable the amount of the delinquency together with the amount of interest to which such owner is found by the commission to be entitled under § 15-74-601 et seq. plus, as a penalty, an additional amount equal to the sum of those amounts, but which penalty shall not exceed one hundred thousand dollars (\$100,000).

(b)(1) Where the amount of the penalty awarded under subsection (a) of this section is less than twenty-five thousand dollars (\$25,000), the commission may levy, in addition thereto, a civil penalty in an amount not to exceed twenty-five thousand dollars (\$25,000) less the penalty awarded under subsection (a).

(2) Any such additional penalty awarded under this subsection shall be paid into the general fund of the commission.

(3) The combined amount of penalties awarded under subsection (a) of this section and this subsection shall not exceed one hundred thousand dollars (\$100,000) per claim.

(c)(1) Pending compliance with any order issued hereunder, the commission may order the operator of the well or wells from which the delinquency arose to suspend payment of all eight-eighths (8/8) of the revenue therefrom allocable to the party or entity responsible for compliance with such order. Where the revenue is being paid by the purchaser directly to such person or entity, the commission may order that it be suspended by the purchaser.

(2) The commission may order that all or any part of funds ordered to be suspended hereunder be applied to the payment of the delinquency, interest, and penalties.

(d) In aid of its investigation of claimed delinquencies, the commission may require the operators of the wells from which the royalty is derived to furnish the commission or its investigator any relevant information pertaining to such well or wells that is in its possession.

(e) The person or entity ordered to appear at a hearing held pursuant hereto shall have the right to join, as third party respondents, any parties to whom the oil or gas that is the subject of the hearing was sold and, upon a finding that such third party respondent, without justification, has caused or contributed to a delinquency, such party may be required to pay all or some part of the amounts ordered hereunder to be paid.

History. Acts 1991, No. 166, §1.

A.C.R.C. Notes. References to “this subchapter” in §§ 15-74-701 — 15-74-708

may not apply to this section which was enacted subsequently.

CHAPTER 75

LIQUEFIED PETROLEUM GASES

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. LIQUEFIED PETROLEUM GAS BOARD.
3. PERMITS AND CERTIFICATES OF COMPETENCY.
4. CONTAINERS.

A.C.R.C. Notes. References to “this chapter” in §§ 15-75-101 to 15-75-110 and subchapters 2-4 may not apply to § 15-75-

111 which was enacted subsequently.

Effective Dates. Acts 1965, No. 31, § 33; Feb 4, 1965. Emergency clause pro-

vided: "It has been found and is declared by the General Assembly of the State of Arkansas that persons utilizing liquefied petroleum gases reside in areas where no municipal regulations provide for necessary safety measures relative to the proper installation and handling of these gases, and that improper use and installation of liquefied petroleum gases and its equipment and appurtenances would be highly detrimental and injurious to the safety and welfare of the people of the

State of Arkansas, and that adequate laws are urgently needed for the protection of the public against the dangers inherent in the handling and consumption of liquefied petroleum gases, and that the enactment of this measure will provide the necessary protection required for the safety and welfare of the public of the State of Arkansas. Therefore, an emergency is hereby declared to exist, and this law shall be in full force and effect from and after its passage and approval."

CASE NOTES

ANALYSIS

Purpose.
Negligence.

Purpose.

The requirements of this chapter have been taken to be directed primarily to public safety. *Zero Whsle. Gas Co. v. Stroud*, 264 Ark. 27, 571 S.W.2d 74 (1978).

Negligence.

Any violation of former laws which

regulated use of butane gas was evidence of negligence. *Rice v. King*, 214 Ark. 813, 218 S.W.2d 91 (1949) decision under prior law.

Cited: *Summers Appliance Co. v. George's Gas Co.*, 244 Ark. 113, 424 S.W.2d 171 (1968); *Gray's Butane Whsle., Inc. v. Arkansas Liquefied Petro. Gas Bd.*, 250 Ark. 69, 463 S.W.2d 639 (1971).

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 15-75-101. Title.
- 15-75-102. Definitions.
- 15-75-103. Penalty.
- 15-75-104. Actions for injunction against violation.
- 15-75-105. Schedule of inspection and registration fees.
- 15-75-106. Disposition of funds.
- 15-75-107. Odorization of gas.
- 15-75-108. Dealers' safety meetings for employees.

SECTION.

- 15-75-109. Liability of persons rendering aid with respect to accidents involving transportation of compressed gases.
- 15-75-110. Reports.
- 15-75-111. Discretionary suspension of inspection and registration fees.
- 15-75-112. Affirmative defense.

A.C.R.C. Notes. References to "this subchapter" in §§ 15-75-101 to 15-75-110 may not apply to §§ 15-75-111 and § 15-75-112 which were enacted subsequently.

Effective Dates. Acts 1985, No. 909, § 4: Apr. 15, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of

Arkansas that the inherent hazards encountered in the storage, transportation, and handling of liquefied petroleum gases, as well as the location of containers and equipment necessary for the utilization of said gases, warrants strict governmental supervision and enforcement of adequate rules and regulations which are manda-

tory for the safety of the liquefied petroleum gas industry of this State and the public it serves, and that proper funding is necessary for the efficient operation of the Liquefied Petroleum Gas Board. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1997, No. 1277, § 11: July 1, 1997. Emergency clause provided: “It is hereby found and determined by the Eighty-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two

(2) year period; that the effectiveness of this Act on July 1, 1997 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1997 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1997.”

15-75-101. Title.

This act may be known and cited as the “Liquefied Petroleum Gas Board Act”.

History. Acts 1965, No. 31, § 1; A.S.A. 31, codified as §§ 15-75-101 — 15-75-108, 15-75-110, 15-75-201 — 15-75-209, 15-75-

Meaning of “this act”. Acts 1965, No. 301 — 15-75-321, 15-75-401 — 15-75-405.

15-75-102. Definitions.

As used in this act, unless the context otherwise requires:

(1) “Appliance” means any apparatus or fixture attached to a liquefied petroleum gas plant or system for the purpose of utilizing, burning, or consuming gas contained in the plant or system;

(2) “Board” means the Liquefied Petroleum Gas Board;

(3) “Container” means any tank or vessel in which liquefied petroleum gases are stored or transported or in which liquefied petroleum gases are placed for utilization through a liquefied petroleum gas system, except containers used in marine or railroad service which are inspected under federal law or regulation;

(4) “Dealer” means any person who sells or offers for sale liquefied petroleum gases or containers in the state directly to a user;

(5) “Jobber” means any person other than a manufacturer who sells or offers for sale to dealers containers and liquefied petroleum gases;

(6) “Liquefied petroleum gas systems” means all piping and fittings, exclusive of containers and appliances, which are connected to containers and appliances for the utilization of liquefied petroleum gases;

(7) “Liquefied petroleum gases” means gases derived from petroleum or natural gas which are in a gaseous state at normal atmospheric temperature and pressure, but may be maintained in a liquid state at normal atmospheric temperature by the application of sufficient pressure. Normal storage of these gases is as a liquid under pressure.

Pentane, gasoline, and oil are not included in the above as they are liquids at normal temperature without application of pressure;

(8) "Manufacturer" means any person manufacturing any container offered for sale in this state;

(9) "Person" means any individual, partnership, firm, corporation, company, or association or the trustee, receiver, assignee, or personal representative thereof.

(10) "Vendor" means any person who sells or offers for sale appliances in this state; and

History. Acts 1965, No. 31, §§ 1, 15; **Meaning of "this act".** See note to A.S.A. 1947, §§ 53-701, 53-714. § 15-75-101.

15-75-103. Penalty.

Any person violating any of the provisions of this act or any regulation adopted pursuant thereto shall be guilty of a misdemeanor and upon conviction shall be fined in a sum of not less than twenty-five dollars (\$25.00) nor more than one thousand dollars (\$1,000) and, in addition, may be imprisoned for not more than one (1) year, or both.

History. Acts 1965, No. 31, § 30; A.S.A. **Meaning of "this act".** See note to 1947, § 53-729. § 15-75-101.

15-75-104. Actions for injunction against violation.

The Liquefied Petroleum Gas Board, in accordance with the laws of the state governing injunctions, may maintain an action in the name of the state against any person to enjoin the violation of any provision of this act; provided, no bond shall be required prior to obtaining any such injunction.

History. Acts 1965, No. 31, § 29; A.S.A. **Meaning of "this act".** See note to 1947, § 53-728. § 15-75-101.

15-75-105. Schedule of inspection and registration fees.

The Liquefied Petroleum Gas Board shall have authority to charge the following maximum fees for the inspection or registration of the following:

- (1) Containers of fifty (50) water gallon capacity or less \$ 5.00
- Over fifty (50) water gallon through one hundred twenty (120) gallon capacity 10.00
- Over one hundred twenty (120) water gallon through two thousand (2,000) gallon capacity 20.00
- (2) Over two thousand (2,000) water gallon capacity 25.00
- (3) Fuel containers used on mobile equipment, such as automobiles, tractors, and trucks 5.00

- (4) D.O.T. or I.C.C. cylinders shall comply with D.O.T. or I.C.C. regulations, and cylinders with one hundred pound (100 lb.) capacity or less shall require no fee.
- (5) Containers used for bulk storage, regardless of size 35.00
- (6) Cargo containers mounted on trucks or semitrailers, regardless of size 150.00
- (7) Containers used for commercial or industrial storage, cylinder filling plants, service stations 25.00
- (8) Public buildings using liquefied petroleum gas 35.00
- (9) Domestic, commercial, industrial, or other type building 25.00
- (10) Shop inspection, per day 35.00
- (11) Certificate of competency 25.00.

History. Acts 1965, No. 31, § 14; 1977, No. 396, § 1; 1985, No. 909, § 1; A.S.A. 1947, § 53-713; Acts 1991, No. 300, § 1.

15-75-106. Disposition of funds.

(a) All moneys collected as liquefied petroleum gas inspection, registration, permit, or other fees under the provisions of this subchapter shall be deposited in the State Treasury, and the Treasurer of State shall credit the moneys to the Liquefied Petroleum Gas Fund.

(b) All moneys deposited in the fund shall be used for the maintenance, operation, and improvement of the Liquefied Petroleum Gas Board.

History. Acts 1965, No. 31, § 13; A.S.A. 1947, § 53-712.

Cross References. Liquefied Petroleum Gas Fund, § 19-6-407.

15-75-107. Odorization of gas.

All liquefied petroleum gases shall be effectively odorized with a distinctive agent at the time of manufacture by the use of an approved chemical agent of such character as to positively indicate the presence of gas in concentrations not to exceed one-fifth (1/5) of the lowest limit of flammability of such gas, except where used in connection with a chemical or other manufacturing processes in which it would prove harmful and would serve no useful purpose as a warning agent.

History. Acts 1965, No. 31, § 17; A.S.A. 1947, § 53-716.

15-75-108. Dealers' safety meetings for employees.

Each dealer authorized to engage in the liquefied petroleum gas business generally in this state, in conjunction with representatives of the Liquefied Petroleum Gas Board, an insurance company, or other

recognized safety organization, shall conduct with all employees handling liquefied petroleum gases one (1) general safety meeting during each twelve-month period.

History. Acts 1965, No. 31, § 23; A.S.A. 1947, § 53-722; Acts 1995, No. 477, § 1.

15-75-109. Liability of persons rendering aid with respect to accidents involving transportation of compressed gases.

(a) Notwithstanding any provisions of law to the contrary, no individual, partnership, corporation, association, or other entity shall be liable in civil damages as a result of acts taken in the course of rendering care, assistance, or advice with respect to an incident creating a danger to person, property, or the environment as a result of spillage, seepage, fire, explosion, or other release of compressed gases, or the possibility thereof, during the course of transportation of those gases by any mode whatsoever, including loading and unloading.

(b) Notwithstanding any other provision of this section to the contrary, the civil immunity granted by this section shall not extend to any individual, partnership, corporation, association, or other entity engaged in the business of the transportation of compressed gases or to any of their employees.

(c) This section shall not preclude liability for civil damages as the result of gross negligence or intentional misconduct. Reckless, willful, or wanton misconduct shall constitute gross negligence.

History. Acts 1981, No. 839, §§ 1-3; A.S.A. 1947, §§ 53-1401 — 53-1403.

15-75-110. Reports.

Reports of the sales, shipment, and installation of containers and systems shall be made by manufacturers, jobbers, and dealers on such forms and in such manner as may be provided by regulation of the Liquefied Petroleum Gas Board.

History. Acts 1965, No. 31, § 19; A.S.A. 1947, § 53-718.

CASE NOTES

Noncompliance.

Complaint for damages stated a cause of action against the landlord when it alleged a failure of the landlord to report location of butane gas container for in-

spection of boiler inspection department, as required by former similar section. *Rice v. King*, 214 Ark. 813, 218 S.W.2d 91 (1949) (decision under prior law).

15-75-111. Discretionary suspension of inspection and registration fees.

If the balance of the Liquefied Petroleum Gas Fund reaches five hundred thousand dollars (\$500,000), the Liquefied Petroleum Gas Board shall have the discretion to dispense with all inspection and registration fees for a one-year period. At the expiration of the one-year period, if the balance of the fund is below five hundred thousand dollars (\$500,000), the board may reinstate the inspection and registration fees.

History. Acts 1997, No. 1277, § 5. section which was enacted subsequently.
A.C.R.C. Notes. References to “this chapter” in §§ 15-75-101 to 15-75-110 and subchapters 2-4 may not apply to this **Cross References.** Liquefied Petroleum Gas Fund, § 19-6-407.

15-75-112. Affirmative defense.

- (a) As used in this section:
- (1) “Liquefied petroleum gas equipment” means any appliance, equipment, or piping system that uses, stores, or transports liquefied petroleum gas; and
- (2) “Liquefied petroleum gas provider” means any person or entity engaged in the business of supplying, handling, transporting, or selling liquefied petroleum gas.
- (b) A liquefied petroleum gas provider shall have an affirmative defense to any action for civil liability for damage or injury caused by:
- (1) An alteration or modification of liquefied petroleum gas equipment that is not reasonably foreseeable by the provider and causes the liquefied petroleum gas equipment to be unsafe for use in its altered or modified form; or
- (2) The end-user’s use of liquefied petroleum gas equipment if:
- (A) It is outside the manner or purpose that it could reasonably be intended to be used or renders the liquefied petroleum gas equipment unsafe; and
- (B) The liquefied petroleum gas provider or the manufacturer of the liquefied petroleum gas equipment provides a reasonable warning about the consequences of misusing the liquefied petroleum gas equipment.

History. Acts 2007, No. 119, § 1; 2009, No. 481, § 9. section which was enacted subsequently.
A.C.R.C. Notes. References to “this chapter” in §§ 15-75-101 to 15-75-110 and subchapters 2-4 may not apply to this **Amendments.** The 2009 amendment substituted “liquefied” for “liquified” in (b)(2)(B), and made minor stylistic changes throughout (b).

SUBCHAPTER 2 — LIQUEFIED PETROLEUM GAS BOARD

SECTION.
15-75-201. Members.
15-75-202. Meetings.

SECTION.
15-75-203. Office — Seal.
15-75-204. Officers.

SECTION.

- 15-75-205. [Repealed.]
- 15-75-206. Personnel — Counsel.
- 15-75-207. Rules and regulations.
- 15-75-208. Standards for containers, systems, etc.

SECTION.

- 15-75-209. Access for inspections — Investigation of explosions.

Publisher's Notes. Acts 1965, No. 31, created the Liquefied Petroleum Gas Board, and Acts 1971, No. 38, transferred its powers, functions, and duties to the Department of Commerce. However, Acts 1983, No. 691, abolished the Department of Commerce, and § 9 of that Act provided that the Liquefied Petroleum Gas Board should function as an independent agency in the same manner as it had functioned prior to the transfer.

Effective Dates. Acts 1975 (Ex. Sess., 1976), No. 1035, § 3: Jan. 27, 1976. Emergency clause provided: "It is hereby found and determined by the Seventieth General Assembly, meeting in Extended Session, that the standardization of mileage reimbursement for members of the state's boards and commissions will alleviate many discrepancies and inequities in existing laws and will allow such members to receive travel reimbursement commensurate with that paid to state employees. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 691, § 19: effective on close of business June 30, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the various boards, commissions, departments, agencies, and services transferred to the Department of Commerce under the provisions of Act 38 of 1971, as amended, could perform their duties more efficiently as independent agencies; that the agencies and services consolidated within the Department of Commerce under Act 38 of 1971 are so diverse in their purposes and duties that it is difficult for the Administrator of said Department to exert leadership in the operation of such agencies and programs; and, that the abolishment of the Department of Commerce and its central services would re-

sult in financial savings which could be best used for the support and operation of other essential services of government, and that the immediate passage of this act is necessary to provide for the repeal of the Department of Commerce and for the transition of the various departments, agencies, boards, commissions, and programs and services within said Department to an independent status, as provided herein. Therefore, an emergency is hereby declared to exist and this act, being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect as follows: Section 15 of this act shall be effective from and after March 1, 1983, and the remaining provisions of this act shall be effective on the close of business June 30, 1983 and thereafter."

Acts 1987, No. 862, § 3: Apr. 13, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of the case *Ricarte v. State*, CR 86-31, a question has arisen over the validity of Act 1035 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist.

Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 1577, § 14: July 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that current areas of service for persons engaged in the liquefied petroleum gas business are inadequate and need to be expanded, that procedures for making applications for permits and for issuing permits are too lengthy and need to be revised in order to provide better service to the citizens of Arkansas, and that it is necessary for this law to take effect with the beginning on the state's new fiscal year. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and

safety shall become effective on July 1, 1999."

Acts 2001, No. 440, § 7: Feb. 23, 2001. Emergency clause provided: "It is hereby found and determined by the Eighty-third General Assembly that revisions to the Liquefied Petroleum Gas laws in 1999 have caused a backlog in certain classes of LP gas license permits; that this backlog reduces the gas supply being distributed to the citizens of Arkansas; and that this act must take effect immediately in order to clarify the provisions of the class one permit process and to simplify the permit process for classes two through ten LP gas licensees so that the licensing backlog can be eliminated as quickly as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

15-75-201. Members.

(a) The Liquefied Petroleum Gas Board shall consist of seven (7) members who are residents of the State of Arkansas, at least twenty-one (21) years of age, of good moral character, and who shall be appointed by the Governor and confirmed by the Senate.

(b)(1) There shall be one (1) member appointed by the Governor from each congressional district, as the districts existed on January 1, 2007.

(2) There shall be three (3) at-large members appointed by the Governor.

(3)(A)(i) A board member appointed before July 31, 2007 shall serve the remainder of his or her previously appointed six-year term.

(ii) For a board member appointed after July 31, 2007 the term of office shall be four (4) years.

(B)(i) No board member appointed after July 31, 2007 may serve more than two (2) consecutive four-year terms.

(ii) Subdivision (b)(3)(B)(i) of this section does not preclude a former board member from serving again if he or she has not served as a member of the board for at least four (4) consecutive years.

(4) The board shall have at least one (1) member who:

(A) Represents the general public; and

(B) Is not employed by, engaged in, or retired from the liquefied petroleum gas industry in any manner.

(c) After appointment and before entering upon his or her respective duties, each member of the board shall take and subscribe and file in the office of the Secretary of State the oath of office prescribed by Arkansas Constitution, Article 19, § 20.

(d) Members of the board shall not receive compensation for their services but may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1965, No. 31, §§ 2, 3, 6, 9; 1975 (Ex. Sess., 1976), No. 1035, § 1; A.S.A. 1947, §§ 6-616, 53-702, 53-703, 53-705, 53-708; reen. Acts 1987, No. 862, § 1; Acts 1997, No. 250, § 113; 1999, No. 1577, § 1; 2001, No. 440, § 1; 2007, No. 733, § 1.

A.C.R.C. Notes. Part of this section was reenacted by Acts 1987, No. 862, § 1. Acts 1987, No. 834 provided that 1987 legislation reenacting acts passed in the

1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

Publisher's Notes. The terms of the members of the Liquefied Petroleum Gas Board are arranged so that one term expires on January 14 of every year.

Amendments. The 2007 amendment rewrote (b).

15-75-202. Meetings.

(a) The Liquefied Petroleum Gas Board shall adopt and may modify rules for the conduct of its business and shall keep a record of its transactions.

(b) Meetings shall be at the call of the chair or of the vice chair if he or she is for any reason the acting chair, either at his or her own instance or upon the written request of at least four (4) members.

(c) A quorum shall consist of not less than four (4) members present at any regular or special meeting, and a majority affirmative vote of that number shall be necessary for the disposition of any business.

(d) No meeting shall be for a longer period of time than is absolutely necessary to transact the business of the board.

(e) The board shall meet at least once in each calendar quarter, but no more than one (1) meeting shall be held during any sixty-day period for which any member is to receive compensation or reimbursement of expenses incurred.

History. Acts 1965, No. 31, §§ 8, 9; A.S.A. 1947, §§ 53-707, 53-708; Acts 1999, No. 1577, § 2.

15-75-203. Office — Seal.

The Liquefied Petroleum Gas Board shall:

- (1) Maintain its office in Pulaski County;
- (2) Acquire suitable quarters for the conduct of its business; and
- (3) Adopt and use a common seal for the authentication of its orders and records.

History. Acts 1965, No. 31, §§ 1, 10; A.S.A. 1947, §§ 53-701, 53-709; Acts 1999, No. 225, § 1.

15-75-204. Officers.

(a) The Liquefied Petroleum Gas Board shall select from its membership a chair and a vice chair.

(b) No such officer shall serve in the same capacity for more than one (1) year during his or her term.

(c) The board may also select an individual to act as recording secretary who does not necessarily have to be a member of the board.

History. Acts 1965, No. 31, § 7; A.S.A. 1947, § 53-706; Acts 2007, No. 733, § 2.

substituted “his or her” for “any six-year” in (b).

Amendments. The 2007 amendment

15-75-205. [Repealed.]

Publisher’s Notes. This section, concerning advisory committee, was repealed by Acts 1997, No. 250, § 114. The section

was derived from Acts 1965, No. 31, § 5; A.S.A. 1947, § 53-704.

15-75-206. Personnel — Counsel.

(a) The Liquefied Petroleum Gas Board shall appoint a Director of the Liquefied Petroleum Gas Board to serve with the approval and at the pleasure of the Governor.

(b) The director shall have the authority to:

(1) Employ assistants, inspectors, and other personnel; and

(2) Retain counsel as may be necessary to aid it properly in the administration of this subchapter, with the approval of the board.

(c)(1)(A) The director shall have the power and duty to receive applications and to review and approve applications for all classes of permits after applications and supporting papers have been on file for at least thirty (30) days.

(B) The director may issue class one permits once all conditions or prerequisites have been met as set out in § 15-75-307 and the application has been approved by the board.

(C) The director may issue all class two through class ten permits after all conditions and prerequisites have been met as set out in §§ 15-75-308 — 15-75-317.

(2) The director may refuse to approve applications for permits for safety reasons.

(d) The director’s decisions on the approval of the applications for class one permits shall be reviewed by the board at its next regularly scheduled meeting.

History. Acts 1965, No. 31, § 11; 1983, No. 691, § 9; A.S.A. 1947, §§ 53-701.1,

53-710; Acts 1999, No. 1577, § 3; 2001, No. 440, § 2; 2007, No. 733, § 3.

Amendments. The 2007 amendment substituted “director” for “board” in the introductory language of (b); and added “with the approval of the board” at the end of (b)(2) and made a related change.

15-75-207. Rules and regulations.

(a) The Liquefied Petroleum Gas Board is empowered to make reasonable rules and regulations to carry out the provisions of this subchapter. Such rules and regulations shall have the force and effect of law.

(b) In addition to the functions, powers, and duties conferred and imposed upon the board by this subchapter, and the regulation of its own procedure and carrying out its functions, powers, and duties, it shall have the authority from time to time to make, amend, and enforce all reasonable rules and regulations not inconsistent with law, which will aid in the performance of any of the functions, powers, or duties conferred or imposed upon it by law.

(c) All permanent rules and regulations promulgated for the regulation of liquefied petroleum gases as published in the state code governing liquefied petroleum gas containers and equipment dated May 1, 1964, shall remain in full force and effect until changed, altered, amended, or abolished by the board.

History. Acts 1965, No. 31, §§ 12, 28; A.S.A. 1947, §§ 53-711, 53-727.

15-75-208. Standards for containers, systems, etc.

The Liquefied Petroleum Gas Board shall provide additional standards or specifications for containers, systems, appliances, and appurtenances, as may be reasonably necessary for the public safety. The standards or specifications are to be set forth in the rules and regulations of the state code governing liquefied petroleum gas containers and equipment.

History. Acts 1965, No. 31, § 23; A.S.A. 1947, § 53-722.

15-75-209. Access for inspections — Investigation of explosions.

(a) The Liquefied Petroleum Gas Board shall have free access at all reasonable times to any premises in this state where a container or system is for sale, or being used or installed, for the purpose of ascertaining whether the container or system complies with the provisions of this act.

(b) The board shall examine into and make report of the causes of explosions of containers and shall keep a record of the names of all owners or users of the containers or systems, together with the location, make, dimension, age, condition, pressure allowed, and the date of the last inspection of all the containers or systems.

History. Acts 1965, No. 31, § 21; A.S.A. 1947, § 53-720.

Meaning of "this act". Acts 1965, No.

31, codified as §§ 15-75-101 — 15-75-108, 15-75-110, 15-75-201 — 15-75-209, 15-75-301 — 15-75-321, 15-75-401 — 15-75-405.

SUBCHAPTER 3 — PERMITS AND CERTIFICATES OF COMPETENCY

SECTION.

- 15-75-301. Definitions.
- 15-75-302. Annual permit required.
- 15-75-303. Certification of competency required.
- 15-75-304. Certificates of competency — Qualifications.
- 15-75-305. Applicants for permits.
- 15-75-306. Issuance of permits — Classification.
- 15-75-307. Class one permit.
- 15-75-308. Class two permit.
- 15-75-309. Class three permit.
- 15-75-310. Class four permit.
- 15-75-311. Class five permit.
- 15-75-312. Class six permit.
- 15-75-313. Class seven permit.
- 15-75-314. Class eight permit.

SECTION.

- 15-75-315. Class nine permit.
- 15-75-316. Class ten permit.
- 15-75-317. Approval prerequisite to supplying or acquiring certain equipment and products.
- 15-75-318. Fees — Times payable.
- 15-75-319. Reinstatement or transfer of permits — Automatic revocation upon suspension of business.
- 15-75-320. Sales restrictions.
- 15-75-321. Suspension of certificate of competency — Revocation of permit or certificate.
- 15-75-322. Shortage emergencies.
- 15-75-323. Civil penalty.
- 15-75-324. Permit application approvals.

A.C.R.C. Notes. References to "this subchapter" in §§ 15-75-301 — 15-75-321 may not apply to §§ 15-75-322 — 15-75-234 which were enacted subsequently.

Acts 1993, No. 112, § 1, provided, in part, that: "Persons licensed by the LP Gas Board pursuant to Chapter 75 of Title 15 of the Arkansas Code are exempt from the provisions of Chapter 33 of Title 17 of the Arkansas Code pertaining to heating, ventilation, air conditioning, and refrigeration when: (a) engaged in the installation, repair or replacement of an LP gas appliance so long as the appliance is not connected to a refrigeration system except that such person may also engage in the replacement or repair of an LP gas central heating unit when it is combined with an air conditioning unit, and (b) engaged in the installation of a venting system required for a vented-type LP appliance."

Publisher's Notes. The terms of the members of the Liquefied Petroleum Gas Board are arranged so that one term expires on January 14 of every year.

Persons licensed by the LP Gas Board pursuant to Chapter 75 of Title 15 of the Arkansas Code are exempt from the provisions of Chapter 33 of Title 17 of the Arkansas Code pertaining to heating, ven-

tilation, air conditioning, and refrigeration when: (a) engaged in the installation, repair or replacement of an LP gas appliance so long as the appliance is not connected to a refrigeration system except that such person may also engage in the replacement or repair of an LP gas central heating unit when it is combined with an air conditioning unit, and (b) engaged in the installation of a venting system required for a vented-type LP appliance.

Cross References. Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

Effective Dates. Acts 1987, No. 375, § 3; Mar. 23, 1987; 1987, No. 842, § 3; Apr. 8, 1987. Emergency clauses provided: "It has been found and is declared by the General Assembly that a severe hardship exists in the rural areas of this State, as a result of extreme inconvenience being experienced by the users of liquefied petroleum gas in obtaining portable replacement cylinders for empty ones. It is further declared that the establishment of appropriate cylinder exchange stations throughout the rural areas will greatly reduce the hardship and offer greater convenience in obtaining replacement service for the users. Therefore, an emergency is

hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 6, § 5: Jan. 29, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly that Arkansas is chiefly a rural state and that we are entering the coldest portion of the winter season; that shortages of LP gas threaten the health of our citizenry who reside in the rural areas of this state; and further that LP gas shortages result in major damage and loss to the poultry industry of this state. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force from and after its passage and approval."

Acts 1995, No. 604, § 7: Mar. 13, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain provisions in the Arkansas Code regulating Class 2, Class 3, and Class 5 dealers in liquefied petroleum gas are obsolete and overly burdensome, and that the same should be amended as soon as possible to make those laws more equitable. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 1277, § 11: July 1, 1997. Emergency clause provided: "It is hereby found and determined by the Eighty-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1997 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1997 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in

full force and effect from and after July 1, 1997."

Acts 1999, No. 514, § 11: July 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1999 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1999 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1999."

Acts 1999, No. 1577, § 14: July 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that current areas of service for persons engaged in the liquefied petroleum gas business are inadequate and need to be expanded, that procedures for making applications for permits and for issuing permits are too lengthy and need to be revised in order to provide better service to the citizens of Arkansas, and that it is necessary for this law to take effect with the beginning on the state's new fiscal year. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 1999."

Acts 2001, No. 440, § 7: Feb. 23, 2001. Emergency clause provided: "It is hereby found and determined by the Eighty-third General Assembly that revisions to the Liquefied Petroleum Gas laws in 1999 have caused a backlog in certain classes of LP gas license permits; that this backlog reduces the gas supply being distributed to the citizens of Arkansas; and that this act must take effect immediately in order to clarify the provisions of the class one permit process and to simplify the permit process for classes two through ten LP gas licensees so that the licensing backlog can be eliminated as quickly as possible.

Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall be-

come effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

15-75-301. Definitions.

As used in this subchapter:

(1) "Certificate of competency" means approval by the Liquefied Petroleum Gas Board of the employees to be placed in charge of operations, service, installation, and transportation by permit holders;

(2) "Director" means the Director of the Liquefied Petroleum Gas Board appointed by the board and serving with the approval and at the pleasure of the Governor; and

(3) "Permits" means the written authorization granted by the director with the board's approval to persons to engage in the liquefied petroleum gas business.

History. Acts 1965, No. 31, § 24; A.S.A. 31, codified as §§ 15-75-101 — 15-75-108, 1947, § 53-723; Acts 1999, No. 1577, § 4. 15-75-110, 15-75-201 — 15-75-209, 15-75-

Meaning of "this act". Acts 1965, No. 301 — 15-75-321, 15-75-401 — 15-75-405.

CASE NOTES

Cited: Zero Whsle. Gas Co. v. Stroud, 264 Ark. 27, 571 S.W.2d 74 (1978).

15-75-302. Annual permit required.

(a) Every person, as a condition to his or her right to store, sell, or transport liquefied petroleum gases in this state or to his or her right to install systems or to sell or install containers for the use of liquefied petroleum gases or to engage in the business of liquefied petroleum gases generally, shall first obtain a permit from the Director of the Liquefied Petroleum Gas Board with the approval of the Liquefied Petroleum Gas Board as herein prescribed.

(b) Each permit shall be renewed annually.

History. Acts 1965, No. 31, § 24; A.S.A. 1947, § 53-723; Acts 1999, No. 1577, § 5.

CASE NOTES

Cited: Zero Whsle. Gas Co. v. Stroud, 264 Ark. 27, 571 S.W.2d 74 (1978).

15-75-303. Certification of competency required.

(a) No person shall transport, deliver, or handle liquefied petroleum gases or install any container or system, or connect any container to any liquefied petroleum gas system unless and until he or she shall have been certified by the Liquefied Petroleum Gas Board, which shall conduct an examination to determine whether he or she has sufficient knowledge and skill to perform the work in a safe and satisfactory manner.

(b) No certificate or permit shall be required for the storing and handling of portable containers or cylinders constructed in compliance with federal Department of Transportation regulations at cylinder exchange stations set up and established by authorized liquefied petroleum gas dealers as a means of furnishing adequate facilities for the convenient exchange of exhausted containers for fully serviced ones by their customers if:

(1) The water gallon capacity of any container does not exceed thirty (30) gallons;

(2) All cylinders are serviced by the authorized dealer at approved cylinder filling plants and transported to the exchange station by accepted methods;

(3) There is no sale of containers or their contents to the exchange station for resale to the user;

(4) The exchange station operator is properly instructed by the dealer in the appropriate safety procedures necessary for the operation of the station.

History. Acts 1965, No. 31, § 22; A.S.A. 1947, § 53-721; Acts 1987, No. 375, § 1; 1987, No. 842, § 1.

CASE NOTES

Cited: Wright v. Farmers Co-op., 620 F.2d 694 (8th Cir. 1980).

15-75-304. Certificates of competency — Qualifications.

(a) To be entitled to a “certificate of competency”, a person shall:

(1) Have satisfactory experience in the liquefied petroleum gas business or give proof of previous on-the-job training in the liquefied petroleum gas business satisfactory to the Liquefied Petroleum Gas Board as prescribed by its rules and regulations;

(2) Have not less than thirty (30) days’ experience in the liquefied petroleum gas installation or transportation business; and

(3) Pass a written or oral examination as prescribed by the board.

(b) A new class one employee shall attend a forty-hour basic course in liquefied petroleum gas, as prescribed by the board, within the first year of his or her employment, or his or her certification certificate will be suspended until the course has been completed.

(c) A class one employee who changes from one class one employer to another class one employer who has not previously had the forty-hour basic training course, as prescribed by the board, shall do so within one (1) year of the transfer date of employment or his or her certification certificate will be suspended until the course has been completed.

(d)(1) The board may accept as its own a reciprocal state's transportation and delivery examination for a transport driver only if it contains substantially equivalent requirements as those required by the board.

(2) Substantial uniformity shall be demonstrated by a letter from the issuing authority of the state or a copy of a current and valid card issued by the reciprocal state.

(3) All applicable fees shall be paid to the board before the issuance of the certification card.

History. Acts 1965, No. 31, § 24; A.S.A. 1947, § 53-723; Acts 1995, No. 477, § 2; 1999, No. 224, § 1; 2007, No. 733, § 4; 2009, No. 481, § 10.

Amendments. The 2007 amendment deleted former (b) and redesignated the

remaining subsections accordingly, and made a stylistic change in present (d).

The 2009 amendment subdivided (d); and made minor stylistic changes throughout the section.

CASE NOTES

Cited: Zero Whsle. Gas Co. v. Stroud, 264 Ark. 27, 571 S.W.2d 74 (1978).

15-75-305. Applicants for permits.

(a)(1)(A)(i) Any person desiring to engage in the liquefied petroleum gas business in this state must file a formal application and supporting papers, together with a filing fee of fifty dollars (\$50.00), with the Director of the Liquefied Petroleum Gas Board at least thirty (30) days prior to the approval of the application by the director.

(ii) Should the applicant be a corporation or partnership, copies of the articles of incorporation or partnership agreement, if any, shall accompany the application together with a certificate from the Revenue Division of the Department of Finance and Administration evidencing that all taxes due have been paid or otherwise negating state tax liability.

(iii) Application forms will be furnished by the director at any time upon request.

(B)(i) In determining whether to grant permits or certificates, the director shall be given a reasonable time in which to investigate the applicant.

(ii) If the permit or certificate is denied, the applicant shall be notified by registered mail.

(iii) The Liquefied Petroleum Gas Board shall review the director's decision on the approval of class one permit applications at its next regularly scheduled meeting.

(2)(A)(i) The director shall have the power and duty to receive, review, and approve applications for all classes of permits after

applications and supporting papers have been filed with the director for at least thirty (30) days. The director may refuse to approve applications for permits for safety reasons.

(ii) The director may issue class one permits once all conditions and prerequisites have been met as set out in § 15-75-307 and the application has been approved by the board.

(iii) The director may issue class two through class ten permits after application and supporting papers have been on file for at least thirty (30) days and all conditions and prerequisites for those permits have been met as set out in §§ 15-75-308 — 15-75-317.

(B) The board, at its regularly scheduled meetings, shall review the director's decisions on the approval of applications for class one permits. The board may refuse to issue permits for safety reasons.

(3) Any applicant aggrieved by a denial by the director or any person or group of persons who are aggrieved by safety concerns because of the issuance of the permits by the director after the board's approval may appeal the decision within thirty (30) days thereof, to the board by filing a notice of appeal with the board. The notice of appeal of the board's or director's decision shall be on a written form provided by the board. The notice of appeal shall suspend the action of the director in denying an application or in issuing or denying a permit until the next regular meeting of the board or until a special hearing by the board can be held.

(4) A meeting or hearing shall be held within at least thirty (30) days after the date of the filing of the notice of appeal unless the person appealing shall consent to a later hearing.

(5) Within five (5) days after the hearing is concluded, the board shall render its written decision on the appeal.

(6) The board is authorized on its own motion to review any action of the director in denying an application or in issuing or refusing to issue a permit and, upon review, to set aside any action of the director in any of these respects insofar as it pertains to safety issues.

(b) Applicants for class one permits, as defined in § 15-75-307, shall be present at the board meeting at which the review of the director's action on the application is to be considered.

(c) Before any application may be considered by the director and reviewed by the board, the applicant must have on file in the office of the director a certificate of intended insurance evidencing the kinds and amounts as required by this subchapter for the class of permit requested. After approval of the application and before the permit may be issued, a certificate of required insurance must be furnished bearing the clause, "The insurance company will notify the Director, Liquefied Petroleum Gas Board, thirty (30) days prior to cancellation of the insurance referred to herein." Binders by insurance agents are not acceptable for the purposes of this subchapter.

(d) All applicants must agree to provide adequate equipment and products which are satisfactory to the board.

(e) All persons in charge of operations and servicemen, installation men, and truck drivers must have a certificate of competency from the board. Each certificate of competency shall be renewed annually.

(f)(1) Applicants must have satisfactory experience in the liquefied petroleum gas business or have employed a recognized operator of the business with experience and competency. In order that the director or the board may be assured as to competency insofar as safety is concerned, applicants for permits to engage in the liquefied petroleum gas business generally shall qualify for new certificates of competency. One (1) or more employees who are to be engaged in the delivery and transportation of liquefied petroleum gas, and one (1) or more separate employees who are to be engaged in the installation of liquefied petroleum gas containers and systems, as well as a general safety supervisor, shall have a general knowledge of the characteristics of liquefied petroleum gases, as well as of its proper handling and utilization, along with a thorough knowledge and understanding of the National Fire Protection Association Pamphlet No. 58 and the State Liquefied Petroleum Gas Code covering the storage and handling of liquefied petroleum gases, as established by a current written or oral examination prepared and conducted by the director with the approval of the board.

(2) Applicants must agree to furnish whatever information the director or the board may require as to their ability to engage in the liquefied petroleum gas business and must also furnish whatever references the director or the board may require.

(g)(1) In order that the public or the user of liquefied petroleum gases may be assured of competent and efficient service to any container, system, or appurtenance, each dealer who has been issued a current permit or any applicant therefor in addition to competent gas delivery and transportation personnel, shall provide separate competent personnel for the installation and servicing of containers, systems, and appurtenances.

(2) In determining whether or not to grant a permit, the director and the board shall determine whether or not an applicant can provide safe and efficient service to the public or the users in the area in which liquefied petroleum gas operations are to be conducted.

(h) In addition to the foregoing requirements, applicants must also meet the additional requirements listed under the specific class of permit desired.

(i) All foreign corporations doing business in this state in any phase of the liquefied petroleum gas business must furnish evidence of their qualifications to do business in the state as a foreign corporation.

(j) In addition to the foregoing, the board shall have the power to make reasonable application requirements by rules and regulations and shall adopt rules and regulations as it shall deem necessary to govern the procedures in any hearing to review the issuance or denial of permits.

(k)(1) Applicants for a class one permit must attend a forty-hour basic course in liquefied petroleum gas, as prescribed by the board, prior to the board meeting at which the review of the final action on their application may be heard.

(2) All owners, managers or officials, and employees connected to or listed on the class one application must attend the basic training course prior to the board meeting at which the review of their application may be heard.

History. Acts 1965, No. 31, § 24; A.S.A. 1947, § 53-723; Acts 1991, No. 300, § 2; 1995, No. 477, § 3; 1999, No. 1577, § 6; 2001, No. 440, §§ 3-6; 2007, No. 733, § 5.

A.C.R.C. Notes. The amendment to § 15-75-305(f)(2) by Acts 2007, No. 733, § 5 omitted the following language: "In determining whether to grant a class one permit, the director, with the approval of the board, shall take into consideration the competency of the applicant insofar as safety is concerned and whether the applicant can safely serve the service area for

which he or she has made application. Otherwise, the application, with all requirements met, shall be presumed granted." As the language was omitted from § 15-75-305(f)(2) without being stricken through in the act, it is not clear whether the omission of the language by the General Assembly was intentional.

Amendments. The 2007 amendment deleted "financial condition, character, and" following "to their" in (f)(2).

Meaning of "this act". See note to § 15-75-301.

CASE NOTES

ANALYSIS

Public Convenience and Necessity.
Safety Supervisor.

Public Convenience and Necessity.

In directing the Liquefied Petroleum Gas Board to consider public convenience and necessity, the legislature has not imposed upon liquefied petroleum gas distributors the mandatory duty to obtain a certificate of convenience and necessity, but only directed the board to consider the public welfare within the scope of its authority. *Summers Appliance Co. v.*

George's Gas Co., 244 Ark. 113, 424 S.W.2d 171 (1968).

Safety Supervisor.

The burden was upon the applicant for a permit to show that adequate protection would be afforded the public by a safety supervisor who did not live in the district and would have to fly into the district from another district when needed, which would require an hour or more. *Gray's Butane Whsle., Inc. v. Arkansas Liquefied Petro. Gas Bd.*, 250 Ark. 69, 463 S.W.2d 639 (1971).

Cited: *Zero Whsle. Gas Co. v. Stroud*, 264 Ark. 27, 571 S.W.2d 74 (1978).

15-75-306. Issuance of permits — Classification.

(a) After approval of the application by the Director of the Liquefied Petroleum Gas Board and review by the Liquefied Petroleum Gas Board as provided in § 15-75-305, the director may issue the classes of permits set out in §§ 15-75-307 — 15-75-317 on the conditions indicated in those sections.

(b) All class one permit application approvals must have all prerequisites met and the permit issued within one (1) year of approval. If not issued within one (1) year of approval, the application will be returned to the applicant and a new application must be submitted to the director thirty (30) days prior to the date of the regular meeting at which the review of the director's action on the application is to be considered.

History. Acts 1965, No. 31, § 24; A.S.A. 1947, § 53-723; Acts 1997, No. 1277, § 4; 1999, No. 1577, § 7; 2007, No. 733, § 6.

Amendments. The 2007 amendment substituted “one (1) year” for “six (6) months” twice in (b).

CASE NOTES

Cited: Zero Whsle. Gas Co. v. Stroud, 264 Ark. 27, 571 S.W.2d 74 (1978).

15-75-307. Class one permit.

(a) The holder of a class one permit may engage in any phase of the liquefied petroleum gas business in a county or contiguous counties if he or she pays an annual permit fee of five hundred dollars (\$500) for the first county under the permit and three hundred dollars (\$300) for each contiguous county included under the permit.

(b) An applicant for a class one permit:

(1) Shall furnish to the Liquefied Petroleum Gas Board evidence of the following insurance:

(A) Manufacturers’ and Contractors’ Bodily Injury Liability Insurance	Each Person	\$500,000
	Each Accident	500,000
	Insurance	
(B) Manufacturers’ and Contractors’ Property Damage Liability Insurance	Each Accident	\$500,000
	Aggregate	500,000
	Insurance	
(C) Products Bodily Injury Liability Insurance	Each Person	\$500,000
	Each Accident	500,000
	Aggregate	500,000
(D) Products Property Damage Liability Insurance	Each Person	\$500,000
	Aggregate	500,000
(E) Automobile Bodily Injury Liability Insurance	Each Person	\$500,000
	Each Accident	500,000
(F) Automobile Property Damage Liability Insurance	Each Accident	\$500,000

(2)(A) Shall designate a county in this state for:

(i) The location of the proposed principal place of business of the applicant; and

(ii) The proposed location of the principal bulk storage tank facility; and

(B) Shall maintain a twenty-four-hour emergency telephone number;

(3)(A) Must provide a list of counties in which the operation is to be conducted.

(B)(i) The applicant shall designate within one (1) Arkansas county the location of the proposed principal place of business of the applicant and the proposed location of the principal bulk storage tank facility.

(ii) The designated county shall be the home county area of operation of the applicant.

(C) The permit fee shall be paid for each county in which the applicant operates;

(4)(A) Shall provide full-time employment of qualified personnel whose competency shall be proven through a current written or oral examination.

(B) There shall be a minimum of three (3) employees.

(C) For each permit, one (1) employee shall be certified as a general safety supervisor and one (1) employee shall be certified as installation personnel.

(D) One (1) employee may be certified as both transport and delivery/installation, a combination certification, but that combination certification shall not relieve the requirement for a minimum of three (3) employees;

(5)(A)(i) Shall provide a bulk storage capacity of not less than thirty thousand (30,000) water gallons at the principal location of the permitted facility.

(ii) The principal location must be approved by the board in advance of the application.

(iii) The principal location must be maintained by the applicant in safe working condition throughout the duration of the permit under penalty of permit forfeiture by action of the board.

(B) Storage containers being used in connection with cotton gins, rice dryers, manufacturing plants, or any other type of commercial use, regardless of size, will not be accepted as bulk storage and cannot be included in the requirements for the thirty-thousand-gallon storage.

(C)(i) One (1) place of business that shall be the principal working location for the employees of the permitted facility shall be maintained within the state.

(ii) A twenty-four-hour emergency telephone number shall be posted and maintained;

(6)(A) Shall provide approved-type cylinder or bottle-filling facilities consisting of a separate pump, the capacity of which shall not be in excess of twenty (20) gallons per minute and shall be designed for the primary purpose of filling bottles.

(B) Where a manifold or multiple filling system is contemplated, the board shall be consulted regarding pump capacity;

(7) Shall provide equipment satisfactory to the board;

(8)(A) Shall provide switch track or tank loading and unloading facilities satisfactory to the board.

- (B) All auxiliary equipment such as pumps, hoses, electrical switches, etc., shall be Underwriters' Laboratory-approved for liquefied petroleum gases; and
- (9) In addition to the foregoing requirements, all class one applicants must comply with all other applicable requirements.

History. Acts 1965, No. 31, § 24; 1977, No. 396, § 2; A.S.A. 1947, § 53-723; Acts 1991, No. 300, § 3; 1995, No. 477, § 4; 1999, No. 1577, § 8; 2001, No. 1219, § 1; 2007, No. 733, § 7; 2009, No. 481, § 11.

Amendments. The 2007 amendment rewrote the section.
The 2009 amendment redesignated (b)(5) and made minor stylistic changes.

CASE NOTES

Cited: Zero Whsle. Gas Co. v. Stroud, 264 Ark. 27, 571 S.W.2d 74 (1978).

15-75-308. Class two permit.

- (a) The holder of a class two permit:
- (1) May install liquefied petroleum gas piping and install and sell liquefied petroleum gas containers and appliances but may not deliver gas; and
- (2) Must pay an annual permit fee in the sum of one hundred dollars (\$100).
- (b) The applicant for a class two permit:
- (1) Must furnish evidence of the following insurance:
- | | | |
|---|---|---------------------------------|
| (A) Manufacturers' and Contractors' Bodily Injury Liability Insurance | Each Person
Each Accident | \$250,000
500,000 |
| (B) Manufacturers' and Contractors' Property Damage Liability Insurance | Each Accident
Aggregate | \$250,000
500,000 |
| (C) Products Bodily Injury Liability Insurance | Each Person
Each Accident
Aggregate | \$250,000
500,000
500,000 |
| (D) Products Property Damage Liability Insurance | Each Accident
Aggregate | \$250,000
500,000 |
- (2) Must provide a certified or notarized financial statement which has been compiled within the past sixty (60) days;
- (3) Must provide full-time employment of qualified personnel whose competency shall be proven through a current written or oral examination; and

(4) Must comply with all other applicable requirements for class two applicants.

History. Acts 1965, No. 31, § 24; A.S.A. 1947, § 53-723; Acts 1991, No. 300, § 4; 1995, No. 604, § 1.

CASE NOTES

Cited: Zero Whsle. Gas Co. v. Stroud, 264 Ark. 27, 571 S.W.2d 74 (1978).

15-75-309. Class three permit.

- (a) The holder of a class three permit:
 - (1) May fill, sell, and deliver ICC/DOT cylinders and ASME motor fuel cylinders only;
 - (2) May establish cylinder exchange stations, deliver filled cylinders to ICC/DOT cylinder and ASME cylinder exchange stations, and service cylinders throughout the state;
 - (3) Must pay an annual permit fee in the sum of one hundred dollars (\$100);
 - (4) Must provide liquefied petroleum gas for the cylinders by the following method:
 - (A) Furnish a storage container to be located in Arkansas, with a capacity of not less than one thousand (1,000) gallons, unless the Liquefied Petroleum Gas Board authorizes a smaller container, in connection with the proper type filling facilities;
 - (B) Cylinders, not to exceed thirty (30) gallons, must be filled by weight or other approved method only at cylinder filling facilities approved by the board.
- (b) The storage container furnished by the class three permit must be inspected and approved by the board prior to its first use in the class three operation and once annually thereafter.
- (c) When any cylinder exchange station location changes status from active to inactive or inactive to active the class three permit holder must notify the board within thirty (30) days after the change of status.
- (d) The applicant for a class three permit:
 - (1) Must furnish evidence of the following insurance:

(A) Manufacturers' and Contractors' Insurance	Each Person	\$500,000
	Bodily Injury Liability	Each Accident
	Insurance	500,000
(B) Manufacturers' and Contractors' Insurance	Each Accident	\$500,000
	Property Damage Liability	Aggregate
	Insurance	500,000

(C) Products Bodily Injury Liability Insurance	Each Person	\$500,000
	Each Accident	500,000
	Aggregate	500,000
(D) Products Property Damage Liability Insurance	Each Accident	\$500,000
	Aggregate	500,000

(2) Must provide full-time employment of qualified personnel whose competency shall be proved through a current written or oral examination;

(3) Must provide a certified or notarized financial statement which has been compiled within the past sixty (60) days; and

(4) Must comply with all other applicable requirements.

History. Acts 1965, No. 31, § 24; A.S.A. 1947, § 53-723; Acts 1991, No. 300, § 5; 1995, No. 604, § 2.

CASE NOTES

Cited: Zero Whsle. Gas Co. v. Stroud, 264 Ark. 27, 571 S.W.2d 74 (1978).

15-75-310. Class four permit.

The holder of a class four permit:

(1) May sell and install liquefied petroleum gas equipment used on internal combustion engines, permanently mounted on mobile equipment only;

(2) May not deliver liquefied petroleum gas;

(3) May not sell or install any other type of containers or appliances;

(4) Must comply with all applicable requirements; and

(5) Must pay an annual permit fee in the sum of fifty dollars (\$50.00).

History. Acts 1965, No. 31, § 24; A.S.A. 1947, § 53-723; Acts 1991, No. 300, § 6.

CASE NOTES

Cited: Zero Whsle. Gas Co. v. Stroud, 264 Ark. 27, 571 S.W.2d 74 (1978).

15-75-311. Class five permit.

(a) The holder of a class five permit:

(1) May deliver liquefied petroleum gas to or for class one dealers but shall not retail liquefied petroleum gas or sell or install liquefied petroleum gas containers or systems;

(2) Shall not use motor fuel directly from cargo trailer tanks;

(3) May deliver liquefied petroleum gas to class three dealers engaged in cylinder exchange, delivery, or service if the class three permit

holder has installed an approved storage container with a minimum capacity of six thousand (6,000) gallons;

(4)(A) Shall be required to undergo an annual safety inspection on all transport delivery trucks. The safety inspection or documentation of the safety inspection shall be received by the office of the Director of the Liquefied Petroleum Gas Board prior to operation of the transport delivery trucks over Arkansas roads. All permit and inspection fees for Arkansas are applicable.

(B) The inspection shall be performed by:

(i) The Liquefied Petroleum Gas Board inspector; or

(ii) An acceptable qualified agency having jurisdiction or authority over liquefied petroleum gas;

(5) Must notify the board prior to the first delivery of liquefied petroleum gas to a class three permit holder to ensure that proper inspection of cylinder exchange filling facilities has been performed, and no delivery may be made until the facility has been inspected and approved by the board and the notice transmitted to the board; and

(6) Must pay an annual permit fee in the sum of two hundred dollars (\$200).

(b) An applicant for a class five permit:

(1) Must furnish evidence of the following insurance:

(A) Automobile Bodily Injury	Each Person	\$500,000
Liability Insurance	Each Accident	500,000

(B) Automobile Property Damage	Each Accident	\$500,000
Liability Insurance		

(2) Must provide a certified or notarized financial statement which has been compiled within the past sixty (60) days;

(3) Must provide full-time employment of qualified personnel whose competency shall be proved through a current written or oral examination; and

(4) Must comply with all other applicable requirements.

History. Acts 1965, No. 31, § 24; A.S.A. 1947, § 53-723; Acts 1991, No. 300, § 7; 1995, No. 604, § 3; 1999, No. 223, § 1.

CASE NOTES

Cited: Zero Whsle. Gas Co. v. Stroud, 264 Ark. 27, 571 S.W.2d 74 (1978).

15-75-312. Class six permit.

(a) The holder of a class six permit:

(1) May transport liquefied petroleum gas over the highways of the state for delivery to points outside the state only;

- (2) May not deliver liquefied petroleum gas to any Arkansas dealer, commercial or industrial plant, or directly to a consumer;
- (3) May not sell or install any type of container or system;
- (4) Must have all delivery equipment inspected and approved before being placed in operation and annually thereafter;
- (5) Shall not use motor fuel directly from cargo tanks; and
- (6) Must pay an annual permit fee in the sum of two hundred dollars (\$200).
- (b) All transport truck operators must have certificates of competency from the Liquefied Petroleum Gas Board.
- (c) An applicant for a class six permit:
- (1) Must furnish evidence of the following insurance on each truck used in operations in this state:

(A) Automobile Bodily Injury	Each Person	\$500,000
Liability Insurance	Each Accident	500,000
(B) Automobile Property Damage	Each Accident	\$500,000
Liability Insurance		

- (2) Must submit an inventory of all trucks traveling in this state showing the following information:
 - (A) Name of liquefied petroleum gas tank manufacturer;
 - (B) Code under which constructed;
 - (C) Design working pressure and water capacity;
 - (D) Relief valve setting;
 - (E) Tank manufacturer's serial number;
 - (F) Type and size of fuel tanks;
 - (G) Number, type, and size of fire extinguishers;
 - (H) Manufacturer's data sheet for each container, including fuel tanks; and
- (3) Must comply with all other applicable requirements.

History. Acts 1965, No. 31, § 24; A.S.A. 1947, § 53-723; Acts 1991, No. 300, § 8; 1995, No. 477, § 5.

CASE NOTES

Cited: Zero Whsle. Gas Co. v. Stroud, 264 Ark. 27, 571 S.W.2d 74 (1978).

15-75-313. Class seven permit.

- (a) The holder of a class seven permit:
 - (1) May operate liquefied petroleum gas service stations;
 - (2) May sell liquefied petroleum gas to operators of mobile equipment only;
 - (3) May not sell or install any type container or appliance;

- (4) May not fill any type container except those permanently mounted on mobile equipment;
- (5) Must provide storage and dispensing facilities suitable to the Liquefied Petroleum Gas Board;
- (6) Must furnish evidence of the following insurance:

(A) Manufacturers' and Contractors' Bodily Injury Liability Insurance	Each Person Each Accident	\$500,000 500,000
(B) Manufacturers' and Contractors' Property Damage Liability Insurance	Each Accident Aggregate	\$500,000 500,000
(C) Products Bodily Injury Liability Insurance	Each Person Each Accident Aggregate	\$500,000 500,000 500,000
(D) Products Property Damage Liability Insurance	Each Accident Aggregate	\$500,000 500,000
or		
Garage Liability Bodily Injury Insurance	Each Person Each Accident	\$500,000 500,000
or		
Garage Liability Property Damage Liability Insurance	Each Accident	\$500,000

- (7) Must pay an annual permit fee in the sum of one hundred dollars (\$100).
- (b) In addition to the foregoing requirements, all class seven applicants must comply with all other applicable requirements.

History. Acts 1965, No. 31, § 24; A.S.A. 1947, § 53-723; Acts 1991, No. 300, § 9; 1995, No. 477, § 6.

CASE NOTES

Cited: Zero Whsle. Gas Co. v. Stroud, 264 Ark. 27, 571 S.W.2d 74 (1978).

15-75-314. Class eight permit.

- (a) Class eight permits may be issued to, but not limited to, refineries, jobbers, or sellers of liquefied petroleum gas.
- (b) Holders of class eight permits:
 - (1) May sell to permit holders exclusively; and
 - (2) Must pay an annual permit fee in the sum of two hundred dollars (\$200).

History. Acts 1965, No. 31, § 24; A.S.A. 1947, § 53-723; Acts 1991, No. 300, § 10.

CASE NOTES

Cited: Zero Whsle. Gas Co. v. Stroud, 264 Ark. 27, 571 S.W.2d 74 (1978).

15-75-315. Class nine permit.

- (a) Holders of class nine permits:
 - (1) May sell liquefied petroleum gas containers or equipment to permit holders exclusively;
 - (2) Must furnish evidence of the following insurance:

(A) Manufacturers' and Contractors' Bodily Injury Liability Insurance	Each Person Each Accident	\$500,000 500,000
(B) Manufacturers' and Contractors' Property Damage Liability Insurance	Each Accident Aggregate	\$500,000 500,000
(C) Products Bodily Injury Liability Insurance	Each Person Each Accident Aggregate	\$500,000 500,000 500,000
(D) Products Property Damage Liability Insurance	Each Accident Aggregate	\$500,000 500,000
- (3) Shall submit, for approval by the Director of the Liquefied Petroleum Gas Board, blueprints and specifications in duplicate for each type of container before any liquefied petroleum gas containers are shipped into the state. All fittings and the manufacturer thereof shall be listed, and no variation from prints submitted will be permitted until the variations from the plans submitted have received approval by the director;
- (4)(A) Must file a report of containers shipped. On the date of shipment, the manufacturer must forward a list of each container on an approved form, together with one (1) data sheet for each container shipped into the state, showing manufacturer's serial number, capacity in gallons, and to whom shipped.
- (B) Each manufacturer and jobber of liquefied petroleum gas containers shall forward to the Liquefied Petroleum Gas Board, together with the required notice of shipment and data sheet on the same day shipment is made, the following registration fees for each container shipped into the state:
 - (i) Containers of fifty (50) water gallon capacity or less \$5.00

- (ii) Over fifty (50) water gallon through one hundred twenty (120) gallon capacity \$10.00
 - (iii) Over one hundred twenty (120) water gallon through five hundred (500) gallon capacity \$20.00
 - (iv) Over five hundred (500) water gallon through two thousand (2,000) gallon capacity \$20.00
 - (v) Over two thousand (2,000) water gallon capacity \$25.00
 - (vi) Fuel containers used on mobile equipment such as automobiles, tractors, and trucks \$5.00
- (5) Must attach a registration tag to each container shipped. However, bulk storage containers, delivery trucks, transport trucks, and containers of thirty (30) water gallon capacity or less manufactured in compliance with the federal Interstate Commerce Commission are exempt from registration tags and fees;
- (6) Must furnish photostats of current American Society of Mechanical Engineers certificate of authorization and field card of shop inspector;
- (7) Must sell liquefied petroleum gas containers or equipment to permit holders exclusively; and
- (8) Must pay an annual permit fee in the sum of one hundred dollars (\$100).
- (b) In addition to the foregoing requirements, all class nine applicants must comply with all other applicable requirements.

History. Acts 1965, No. 31, § 24; A.S.A. 1947, § 53-723; Acts 1991, No. 300, § 11; 1995, No. 477, § 7.

A.C.R.C. Notes. The Interstate Commerce Commission, referred to in this section, was abolished by the Interstate Commerce Commission Termination Act of 1995, Pub. L. No. 104-88.

CASE NOTES

Cited: Zero Whsle. Gas Co. v. Stroud, 264 Ark. 27, 571 S.W.2d 74 (1978).

15-75-316. Class ten permit.

- (a) Holders of class ten permits:
 - (1) May engage in the installation of liquefied petroleum gas piping and appliances in any type building, but may not sell or install liquefied petroleum gas containers; and
 - (2) Must pay an annual permit fee in the sum of one hundred dollars (\$100).
- (b) Applicants for class ten permits:
 - (1) Must furnish evidence of the following insurance:

(A) Manufacturers' and Contractors' Bodily Injury Liability Insurance	Each Person Each Accident	\$500,000 500,000
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(B) Manufacturers' and Contractors' Insurance	Each Accident Property Damage Liability Aggregate	\$500,000 500,000
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(2) Must provide a certified or notarized financial statement which has been compiled within the past sixty (60) days;

(3) Must provide full-time employment of qualified personnel whose competency shall be proved through a current written or oral examination; and

(4) Must comply with all other applicable requirements.

History. Acts 1965, No. 31, § 24; A.S.A. 1947, § 53-723; Acts 1991, No. 300, § 12; 1995, No. 477, § 8.

CASE NOTES

Cited: Zero Whsle. Gas Co. v. Stroud, 264 Ark. 27, 571 S.W.2d 74 (1978).

15-75-317. Approval prerequisite to supplying or acquiring certain equipment and products.

(a) No applicant for a permit shall purchase, lease, rent, or furnish any equipment or product which is subject to inspection or regulation by the Liquefied Petroleum Gas Board until the application has been approved and authority to purchase has been granted by the Director of the Liquefied Petroleum Gas Board.

(b) No permit holder shall sell, lease, rent, or furnish any equipment or product which is subject to inspection or regulation by the board to any applicant until the application has been approved and the authority to purchase has been granted by the director.

History. Acts 1965, No. 31, § 24; A.S.A. 1947, § 53-723; Acts 1999, No. 1577, § 9.

CASE NOTES

Cited: Zero Whsle. Gas Co. v. Stroud, 264 Ark. 27, 571 S.W.2d 74 (1978).

15-75-318. Fees — Times payable.

(a) All fees for permits as classified in §§ 15-75-307 — 15-75-316 are payable on or before January 1 each year.

(b) All fees for inspection must be paid not later than thirty (30) days after inspections are made.

History. Acts 1965, No. 31, § 24; A.S.A. 1947, § 53-723.

CASE NOTES

Cited: Zero Whsle. Gas Co. v. Stroud,
264 Ark. 27, 571 S.W.2d 74 (1978).

15-75-319. Reinstatement or transfer of permits — Automatic revocation upon suspension of business.

(a) Each permit authorized by the Liquefied Petroleum Gas Board shall be issued in the name of the person for whom approval was granted.

(b) No permit shall be transferable to any other person without prior approval by the board.

(c) The permits of all holders who shall cease doing business as authorized by their permits for a period of twenty (20) days shall be automatically revoked and may be reinstated only by action of the board.

(d) A transfer of an existing permit or a reinstatement of an automatic revocation of an existing permit pursuant to this subchapter may be made only upon compliance with this subchapter and rules and regulations pertaining to new applications, and the proposed transfers or reinstatements shall meet all requirements for new applications.

History. Acts 1965, No. 31, § 26; A.S.A.
1947, § 53-725.

15-75-320. Sales restrictions.

(a) No dealer shall sell or offer for sale liquefied petroleum gas or conduct liquefied petroleum gas operations of any type in any area of this state in which certified personnel are not readily available for proper and efficient service to the users' containers, systems, or appurtenances.

(b) Each existing or new permit issued by the Liquefied Petroleum Gas Board shall designate accurately the county or counties in which the holder may conduct liquefied petroleum gas operations.

(c) No dealer shall sell or offer for sale liquefied petroleum gas or conduct liquefied petroleum gas operations of any type in any county or counties not shown on and authorized by a current permit.

(d)(1) Any dealer desiring to enlarge or expand liquefied petroleum gas service beyond his or her permitted counties may add a contiguous county to his or her permit by:

(A) Providing thirty (30) days' written notice of his or her intention to the director; and

(B) Paying a permit fee of three hundred dollars (\$300) for each additional county to be included under the permit.

(2) The director shall report any additional counties included under a class one permit issued under subdivision (d)(1) of this section to the board at its next meeting.

History. Acts 1965, No. 31, § 25; A.S.A. 1947, § 53-724; Acts 1999, No. 1577, § 10; 2001, No. 1219, § 2; 2007, No. 733, § 8.

Amendments. The 2007 amendment rewrote the section.

15-75-321. Suspension of certificate of competency — Revocation of permit or certificate.

(a) The Director, or any inspector, of the Liquefied Petroleum Gas Board is authorized to temporarily suspend the certificate of competency of any person subject to this subchapter if it shall be determined that the person, while engaged in liquefied petroleum gas operations, is so engaged in a reckless, careless, or unsafe manner or in an intoxicated state which endangers human life, provided that those persons shall have an opportunity to contest the suspension under the provisions of this subchapter as hereinafter provided for.

(b) The Liquefied Petroleum Gas Board, upon sufficient proof, may revoke, suspend, reprimand, place on probation, refuse to renew, or refuse to issue the permit or certificate of competency of any holder or person for cause or willful violation of any of the laws or rules and regulations as promulgated by the board after due notice, provided that all persons shall be entitled to a hearing before the board to show cause why the permit or certificate of competency should not be revoked. Any person whose certificate of competency has been temporarily suspended by the director or an inspector of the board shall be entitled to a hearing before the board at its next meeting to show cause why the certificate of competency should not be permanently revoked. No person whose permit or certificate of competency is suspended temporarily or permanently revoked hereunder shall engage in any phase of the liquefied petroleum gas business until authorized to do so by order of the board.

(c) The board is empowered to administer oaths and affirmations, to take depositions, to certify to official actions, and to issue subpoenas to compel the attendance of witnesses and the production of books, papers, and records deemed necessary as evidence in connection with any matter properly before it. In case of contumacy by a witness or a party or a refusal by any person to obey a subpoena, any court within the jurisdiction in which the witness, party, or other person is found or resides or transacts business, upon application by the board, shall issue to the witness, party, or other person as aforesaid an order requiring the person to appear before the board and to produce evidence if so ordered or to give testimony touching on the matter involved. Any failure to obey the order of the court may be punished by the court as a contempt thereof. A person who without just cause fails or refuses to attend and testify or answer any lawful inquiry or to produce books, papers, or records in obedience to a subpoena of the board shall be punished by a fine of not less than two hundred dollars (\$200) or by imprisonment of not longer than sixty (60) days, or by both. Each day the violation continues is a separate offense and may be punished as such. If a holder of a permit or a certificate of competency violates any provision of this subsection, the board may immediately revoke his or her permit or

certificate of competency, and the person shall not thereafter engage in any phase of the liquefied petroleum gas business until he or she has complied with reasonable orders the board may make in connection therewith.

(d) All action taken by the board pursuant to this section is subject to judicial review by the Pulaski County Circuit Court as provided for in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(e) An applicant for or holder of a permit may not engage in any phase of the liquefied petroleum gas business covered by the permit during any period of refusal to grant or of revocation by the board, including the period of the pendency of any appeal from action by the board.

(f) All suppliers of liquefied petroleum gases, containers, and equipment, when notified by the board of a revoked permit, may not legally sell liquefied petroleum gas, containers, or equipment to any person whose permit shall have been revoked.

(g) All fines, penalties, forfeitures, and moneys of all description received by the board shall be deposited in the State Treasury to the credit of the Liquefied Petroleum Gas Fund.

History. Acts 1965, No. 31, § 27; A.S.A. 1947, § 53-726; Acts 1995, No. 477, §§ 9, 10.

15-75-322. Shortage emergencies.

(a) The Governor of the State of Arkansas may join with the governor of any other state in declaring a liquefied petroleum gas shortage emergency.

(b) When the declaration is issued, liquefied petroleum gas trucks and operators meeting all certification, permit, and licensing requirements of the federal government and their home state shall be permitted to transport liquefied petroleum gas in and through Arkansas without obtaining any license, permit, or certification by an agency of the State of Arkansas.

(c) The waiver of Arkansas licensing, permitting, and certification laws and regulations regarding liquefied petroleum gas trucks and operators thereof shall be valid only during the time of the emergency.

History. Acts 1991, No. 6, § 1.

may not apply to this section which was enacted subsequently.

A.C.R.C. Notes. References to "this subchapter" in §§ 15-75-301 — 15-75-321

15-75-323. Civil penalty.

(a) In addition to any other penalty provided in this chapter, any person who violates any provision of this chapter, or any rule or regulation pertaining thereto, shall pay to the Liquefied Petroleum Gas Board a civil penalty of not more than five thousand dollars (\$5,000) for each offense.

(b)(1) If a person against whom a civil penalty has been imposed by the board fails to pay the penalty, the board may file an action in the Pulaski County Circuit Court to collect the civil penalty.

(2) If the board prevails in the action, the defendant shall be directed to pay, in addition to the civil penalty, reasonable attorney's fees and costs incurred by the board in prosecuting the action.

History. Acts 1995, No. 477, § 11.

15-75-324. Permit application approvals.

All class one (1) permit application approvals must have all prerequisites met and the permit issued within six (6) months of approval by the Liquefied Petroleum Gas Board. If not issued within six (6) months of approval, the application will be returned to the applicant and a new application must be submitted to the board thirty (30) days prior to the date of the regular meeting at which the application is to be considered.

History. Acts 1999, No. 514, § 4.

A.C.R.C. Notes. References to "this subchapter" in §§ 15-75-301 — 15-75-321

may not apply to this section which was enacted subsequently.

SUBCHAPTER 4 — CONTAINERS

SECTION.

15-75-401. Vapor pressure.

15-75-402. Strength of butane containers.

15-75-403. Strength of propane containers.

15-75-404. Inspection.

15-75-405. Use of unapproved containers and systems.

SECTION.

15-75-406. Unlawful use of containers.

15-75-407. Retail sellers to furnish account statements to certain customers.

Effective Dates. Acts 1957, No. 257, § 7: Mar. 12, 1957. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the use of liquefied petroleum gas within this state is rapidly expanding and that there are not at present sufficient safeguards to insure that containers of such gases are properly constructed and tested, and to attain this end, the filling or refilling of Liquefied Petroleum Gas containers by other than the owner or authorized person creates a hazardous situation; and that additional State regulation is necessary to alleviate this condition to protect the safety and welfare of the people of this state; therefore, an emergency is hereby declared to exist, and this law shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 199, § 3: Feb. 26, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the inherent hazards encountered in the storage, transportation and handling of liquefied petroleum gases, as well as the location of containers and equipment necessary for the utilization of said gases, warrants strict governmental supervision and enforcement of adequate rules and regulations which are mandatory for the safety of the liquefied petroleum industry of this State and the public it serves. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 909, § 4: Apr. 15, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the inherent hazards encountered in the storage, transportation, and handling of liquefied petroleum gases, as well as the location of containers and equipment necessary for the utilization of said gases, warrants strict governmental supervision and enforcement of adequate rules and

regulations which are mandatory for the safety of the liquefied petroleum gas industry of this State and the public it serves, and that proper funding is necessary for the efficient operation of the Liquefied Petroleum Gas Board. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

15-75-401. Vapor pressure.

The vapor pressure of any gases delivered for use in any container shall not exceed, at one hundred degrees Fahrenheit (100°F), the allowable pressure for gas to be used in the container as fixed by the manufacturer.

History. Acts 1965, No. 31, § 16; A.S.A. 1947, § 53-715.

15-75-402. Strength of butane containers.

Each container, except containers designed to operate under refrigerated or cryogenic conditions, where used in the transportation or storage of a liquefied petroleum gas mixture known as butane gas shall be designed and constructed to withstand an internal pressure of not less than one hundred twenty-five pounds (125 lbs.) per square inch.

History. Acts 1965, No. 31, § 16; A.S.A. 1947, § 53-715.

15-75-403. Strength of propane containers.

Each container, except containers designed to operate under refrigerated or cryogenic conditions, where used for the storage or transportation of a liquefied petroleum gas mixture known as propane gas shall be designed and constructed to withstand an internal pressure of not less than two hundred fifty pounds (250 lbs.) per square inch.

History. Acts 1965, No. 31, § 16; A.S.A. 1947, § 53-715.

15-75-404. Inspection.

(a) Each container used for the storage or transportation of liquefied petroleum gases for distribution or resale shall be inspected at least once annually.

(b) Each container which is to be used or connected as a part of a plant or to a system for the utilization of liquefied petroleum gases shall

have a state registration tag of approval attached before installation and shall be inspected thereafter at such times and in such manner as may be determined under the rules and regulations of the Liquefied Petroleum Gas Board.

(c) No bulk or commercial storage container shall be installed or moved and reinstalled at any location prior to approval by the board.

(d) Any inspector of the board who, after inspection of any container or system, shall find it unsafe, shall forbid its further use.

History. Acts 1965, No. 31, § 18; 1981, No. 199, § 1; 1985, No. 909, § 2; A.S.A. 1947, § 53-717.

15-75-405. Use of unapproved containers and systems.

(a) No person shall use, install, or operate or cause to be used, installed, or operated any container or system until approved by the Liquefied Petroleum Gas Board.

(b) No person shall sell, service, or deliver any gases for use in any container or system prior to approval of the containers or system by the board, nor shall any person sell, service, or deliver gases for use in any container or system, the approval of which has been denied by the board.

History. Acts 1965, No. 31, § 20; A.S.A. 1947, § 53-719.

CASE NOTES

Noncompliance.

Complaint for damages due to explosion of butane gas in restaurant stated a cause of action for negligence against the landlord, where complaint alleged that butane

gas container was operated without the required approval. *Rice v. King*, 214 Ark. 813, 218 S.W.2d 91 (1949) (decision under prior law).

15-75-406. Unlawful use of containers.

(a) If a liquefied petroleum gas container shall bear upon the surface thereof in plainly legible characters the name, mark, initials, or other identifying device of the owner thereof, it shall be unlawful for any person except the owner or a person authorized in writing by him or her:

(1) To fill or refill the container with liquefied petroleum gas or any other gas or compound;

(2) To buy, sell, offer for sale, give, take, loan, deliver, or permit to be delivered, or otherwise use, dispose of, or traffic in any such container; or

(3) To deface, erase, obliterate, cover up, or otherwise remove, conceal, or change any such name, mark, initials, or other identifying device of the owner or to place the name, mark, initials, or other identifying device of any person other than the owner on the container.

(b) The use of liquefied petroleum gas containers by any person other than the person whose name, mark, initial, or device shall be or shall have been upon the liquefied petroleum gas containers, without written consent or purchase of the marked and distinguished liquefied petroleum gas container, for the sale of liquefied petroleum gas or filling or refilling with liquefied petroleum gas, or the possession of the liquefied petroleum gas containers by any person other than the person having his or her name, mark, initial, or other device thereon, without the written consent of the owner, shall be and is declared to be presumptive evidence of the unlawful use, filling or refilling, transition of, or trafficking in the liquefied petroleum gas containers.

(c) Whenever any person or the president, secretary, treasurer, or other officer of any corporation mentioned in subsection (e) of this section or his, her, its, or their authorized agent who has personal knowledge of the facts, shall make oath in writing before any justice of the peace, municipal judge, or other magistrate that the party so making the affidavit has reason to believe and does believe that any of his, her, its, or their liquefied petroleum gas containers marked with the name, initials, mark, or other device of the owner are in the possession of or being used by or being filled or refilled or transferred by any person whose name, initials, mark, or other device does not appear on the containers, and who is in the possession of, filling or refilling, or using any of the containers without the written consent of the owner of the name, initials, or trademark, the magistrate may, when satisfied that there is reasonable cause:

(1) Issue a search warrant and cause the premises designated to be searched for the purpose of discovering and obtaining the containers; and

(2) May also cause to be brought before him or her the person in whose possession such containers may be found and shall then inquire into the circumstances of such a possession. If the magistrate finds that the person has been guilty of a violation of this section, he or she shall impose the punishment herein prescribed, and he or she shall also award the possession of property taken upon the search warrant to the owner thereof.

(d) Any person who shall fail to comply with any of the foregoing provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not more than ninety (90) days or by a fine of not less than twenty-five dollars (\$25.00) and not exceeding three hundred dollars (\$300), or by both fine and imprisonment, for each separate offense.

(e) As used in this section, unless the context otherwise requires:

(1) "Person" means and includes any person, firm, or corporation; and

(2) "Owner" means and includes:

(A) Any person who holds a written bill of sale or other instrument under which title to the container was transferred to the person;

(B) Any person who holds a paid or receipted invoice showing purchase and payment of the container;

(C) Any person whose name, initials, mark, or other identifying device has been plainly and legibly stamped or otherwise shown upon the surface of the container for a period of not less than one (1) year prior to March 12, 1957; or

(D) Any manufacturer of a container who has not sold or transferred ownership thereof by written bill of sale or otherwise.

(f)(1) If a seller of liquefied petroleum gas is unable to promptly respond to a request for the delivery of liquefied petroleum gas from a person lawfully in possession of a liquefied petroleum gas container bearing upon the surface thereof the name, mark, initials, or other identifying device of that seller, the seller shall immediately authorize in writing some other seller, or sellers, to fill or refill the liquefied petroleum gas container. This authorization, including the name, address, and telephone number of the authorized seller, shall be immediately communicated to any customer of the original seller who inquires regarding the delivery of liquefied petroleum gas.

(2) For the purposes of this subsection, a seller is able to "promptly respond to a request" to deliver liquefied petroleum gas if the seller can complete the delivery within ninety-six (96) hours of the request.

(3) This section shall not apply when a seller of liquefied petroleum gas has determined that:

(A) The gas container in the possession of the person requesting delivery is more than ten percent (10%) full;

(B) Delivery of the liquefied petroleum gas would create a safety hazard because of equipment defects;

(C) The person requesting delivery has failed to pay the seller for a previous delivery of liquefied petroleum gas; or

(D) Credit has not been established with the seller by the person requesting delivery, and the person requesting delivery is unable to pay for the liquefied petroleum gas in full at the time of delivery.

(4) In order to expedite the delivery of liquefied petroleum gas, the required pressure testing by the seller is waived for any delivery of liquefied petroleum gas under this subsection only.

(g)(1) The Director of the Liquefied Petroleum Gas Board may allow a liquefied petroleum gas company to fill or service another liquefied petroleum gas company's container during a declared state of emergency by the Governor if the liquefied petroleum gas company owning the container will not or cannot fill or service the container within twenty-four (24) hours after the request for service by a person or company.

(2) If the director determines that there is an immediate need to fill the liquefied petroleum gas container during the declared emergency, the director may authorize the filling of the container in less than the twenty-four-hour period if the company owning the container will not or cannot fill or service the container in less than the twenty-four-hour period.

(3) To expedite the delivery of liquefied petroleum gas, the required pressure testing by the seller is waived for any delivery of liquefied petroleum gas under this subsection during a declared emergency.

History. Acts 1957, No. 257, §§ 1-5; **Amendments.** The 2009 amendment
A.S.A. 1947, §§ 53-730 — 53-734; Acts added (g).
2001, No. 918, § 1; 2009, No. 528, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of assembly, Natural Resources, 24 U. Ark.
Legislation, 2001 Arkansas General As- Little Rock L. Rev. 513.

15-75-407. Retail sellers to furnish account statements to cer-
tain customers.

(a) Each person, corporation, partnership, association, or other en-
tity engaging in the business of selling liquefied petroleum gas at retail
in the state shall furnish within the first twenty (20) days of each
calendar month to each retail customer in the state having a credit
balance of twenty dollars (\$20.00) or more a statement of the customer’s
account showing that credit balance.

(b) The Liquefied Petroleum Gas Board shall see that every propane
dealer doing business in the State of Arkansas receives a copy of this
section and shall monitor compliance with this section.

(c) The failure of any person, corporation, partnership, association,
or other entity to comply with the provisions of this section or the rules
and regulations of the board adopted pursuant to the provisions of this
section shall constitute grounds for the revocation or suspension of the
license or permit of each person or entity to engage in the business of
selling liquefied petroleum gas at retail in this state.

History. Acts 1985, No. 247, §§ 1-3;
A.S.A. 1947, §§ 53-735 — 53-737.

CHAPTER 76
BRINE

SUBCHAPTER.

- 1. GENERAL PROVISIONS. [RESERVED]
- 2. BY-PRODUCTS OF PRODUCTION — DISPOSAL.
- 3. BRINE PRODUCTION.

SUBCHAPTER 1 — GENERAL PROVISIONS
[Reserved]

SUBCHAPTER 2 — BY-PRODUCTS OF PRODUCTION — DISPOSAL

SECTION.

15-76-201. Improper disposal of salt wa-
ter.

SECTION.

15-76-202. Corporations for disposal of
salt water.

Cross References. Severance tax deduction on disposal of salt water, § 26-58-201 et seq.

15-76-201. Improper disposal of salt water.

(a) It shall be unlawful for any firm, person, corporation, or individual to dispose of salt water produced in conjunction with the production of oil or gas into any of the streams, lakes, ponds, and other surface waters of the state from any oil or gas pools or fields. It is the intent of this section to make it mandatory that salt water produced from any newly discovered oil or gas field be disposed of by the producer of the salt water by either putting it in pits or recycling it back into the proper sand.

(b) Should any firm, person, corporation, or individual violate the provisions of this section, he or she shall be fined in any sum not less than one hundred dollars (\$100) and up to one thousand dollars (\$1,000). Each separate day shall constitute a different violation. In addition to the fine imposed in this section, the circuit courts of this state may enjoin the violator from continuing the unlawful disposal.

History. Acts 1957, No. 381, §§ 1, 2;
A.S.A. 1947, §§ 53-211, 53-212.

CASE NOTES

Cited: Sunray DX Oil Co. v. Thurman,
238 Ark. 789, 384 S.W.2d 482 (1964).

15-76-202. Corporations for disposal of salt water.

(a) Corporations may be created in this state for the purpose of gathering, storing, impounding, or otherwise disposing of salt water produced in the drilling and operation of oil wells in this state and to prevent the flow of such water into the streams of this state. Such corporations shall be formed and governed by the general corporation laws of this state.

(b) Any person, corporation, association, or partnership which is now or may hereafter engage in the business of producing oil in this state, as well as any other person or firm, is authorized and empowered to subscribe for, own, and vote stock in corporations created pursuant to and for the purposes described in subsection (a) of this section.

(c) It is the specific purpose and intent of the General Assembly in enacting this section to authorize the creation of corporations to dispose of salt water produced in drilling and operating oil wells and to encourage the development of the corporations by persons, firms, or corporations engaged in oil production in this state. In order to encourage and aid in the development of corporations to dispose of salt water arising from oil production, and in order to make it economical

and practicable for oil producers in this state to develop the corporations or to obtain the benefits of the corporations in disposing of salt water, thereby preventing pollution of streams and lakes in this state, the Oil and Gas Commission and the Arkansas Pollution Control and Ecology Commission and all other appropriate state agencies are encouraged and directed to do and perform all acts within their power and authority to encourage the development of these corporations and assist oil producers in this state in obtaining the benefits for which these corporations are created.

(d) The provisions of this section shall be cumulative to the existing laws of this state, and shall not be deemed to repeal or modify any of such existing laws unless directly in conflict herewith.

History. Acts 1957, No. 392, §§ 1-3;
A.S.A. 1947, §§ 53-213 — 53-215,
53-215n.

SUBCHAPTER 3 — BRINE PRODUCTION

SECTION.

- 15-76-301. Declaration of policy.
- 15-76-302. Definitions.
- 15-76-303. Penalties.
- 15-76-304. Injunctions by the commission.
- 15-76-305. Injunctions against the commission.
- 15-76-306. Authority of the commission.
- 15-76-307. Procedure and rules of the commission.
- 15-76-308. Formation of brine production units.
- 15-76-309. Petition for formation of a brine production unit.
- 15-76-310. Order requiring unit operation — In general.
- 15-76-311. Contents of order.
- 15-76-312. Unlawful drainage — Unit inclusion or accounting.

SECTION.

- 15-76-313. Operator.
- 15-76-314. Participation by owners and royalties.
- 15-76-315. Valuation of brine.
- 15-76-316. Production from tracts within unit.
- 15-76-317. Liability for unit expenses.
- 15-76-318. Drilling permits — Fees.
- 15-76-319. Abandoned wells.
- 15-76-320. Antitrust.
- 15-76-321. Judicial review.
- 15-76-322. Appellate procedure.
- 15-76-323. Subpoena power of the commission.
- 15-76-324. Arkansas Department of Environmental Quality.

Effective Dates. Acts 1981, No. 264, § 6: Feb. 27, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the best interests of the State of Arkansas can be served by the enactment of this legislation, and this Act being necessary for the continued operation of the Oil and Gas Commission should be immediately effective. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full

force from and after its passage and approval."

Acts 1995, No. 1287, § 5: became law without the Governor's signature. Noted Apr. 10, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the current laws relating to the production of brine are in urgent need of updating and clarification; that this act is designed to update and clarify those laws and should be given effect at the earliest practical date. Therefore an emergency is hereby declared to

exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after April 1, 1995.”

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Wright, The Arkansas Law of Oil and Gas, 9 U. Ark. Little Rock L.J. 223.

15-76-301. Declaration of policy.

It is declared to be in the public interest to:

(1) Foster, encourage, and promote the development and production in the state of the natural resource of brine;

(2) Authorize and provide for the operation and development of brine properties in such a manner that the greatest ultimate recovery of brine, and the chemical substances contained therein, is had and that the correlative rights of all owners are fully protected;

(3) Authorize and provide for the formation of units for the production of brine in order that the greatest possible economic recovery of brine, and the chemical substances contained therein, is obtained within the state; and

(4) Empower with and delegate to the Oil and Gas Commission the authority to administer and enforce all provisions of this subchapter.

History. Acts 1979, No. 937, § 1; A.S.A. 1947, § 53-1301.

CASE NOTES

Cited: Jameson v. Ethyl Corp., 271 Ark. 621, 609 S.W.2d 346 (1980).

15-76-302. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) “Aquifer” means any subsurface geological interval in which brine may lie or from which brine is being produced and saved or sold for the primary purpose of extracting chemical substances contained therein;

(2) “Brine” means salt water, whether contained in or removed from an aquifer, and all other chemical substances produced with or extracted from such salt water except for commercial production of oil and gas. Brine produced as an incident to the production of oil and gas, unless the brine is saved or sold for the purpose of extracting the chemical substances therein, shall not be considered brine for purposes of this subchapter;

(3) "Brine production unit" or "unit" means each separate composite area of land so designated by order of the commission for the production of brine and the injection of effluent;

(4) "Commission" means the Oil and Gas Commission;

(5) "Director" means the Director of Production and Conservation of the commission;

(6) "Effluent" means the liquid remaining after extraction of any chemical substances from brine and any other material or chemicals in solution therein or associated therewith;

(7) "Injection well" means a well utilized for injecting effluent or other substances into an aquifer for disposal purposes;

(8) "Just and equitable share of brine" of an owner in a developed unit is that part of the actual production of brine from the unit which is in the same proportion to the total production of brine from the unit as the interest of the owner in the brine of the unit expressed in surface acres is to the total surface acreage of the unit;

(9) "Owner" means the person who has the right to drill into and to produce brine from an aquifer and to appropriate the production either for himself or for himself and another or others;

(10) "Person" means any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind;

(11) "Producer" means the owner of an existing well or wells capable of producing brine, as well as any owner or owners who are capable and willing to incur the capital investment required for purposes of drilling, completing, and equipping the proposed well or wells within any existing or proposed brine production unit; and

(12) "Waste" in addition to its ordinary meaning shall include:

(A) Inefficient, excessive, or improper use or dissipation of energy or alteration of fluid levels contained within an aquifer; and the location, spacing, drilling, or operating of any producing or injection well or wells in a manner which results in a significant reduction in the economic recoverability of brine from an aquifer or the chemical substances contained therein;

(B) Abuse of the correlative rights and opportunities of each owner of brine in an aquifer due to nonuniform and disproportionate withdrawals causing undue drainage between units;

(C) Injecting effluent or other wastes in a manner as to cause unnecessary water channeling or undue forced migration of brine between units;

(D) The undue drowning with effluent of any stratum or part thereof containing commercial quantities of oil or gas; or

(E) The employment of any practice with respect to brine in an aquifer which results or tends to result in a significant reduction in the economic recoverability of such brine or the chemical substances contained therein.

History. Acts 1979, No. 937, § 2; A.S.A. 1947, § 53-1302.

15-76-303. Penalties.

(a) Any person shall be deemed guilty of a misdemeanor and shall be subject, upon conviction in any court of competent jurisdiction, to a fine of not more than five hundred dollars (\$500) or imprisonment for a term of not more than six (6) months, or to both fine and imprisonment, who, for the purpose of evading this subchapter or of evading any rule, regulation, or order made thereunder, shall:

(1) Intentionally make or cause to be made any false entry or statement of fact in any report required to be made by this subchapter or by any rule, regulation, or order made hereunder; or

(2) Make or cause to be made any false entry in any account, record, or memorandum kept by any person in connection with the provisions of this subchapter or of any rule, regulation, or order made hereunder; or

(3) Omit to make, or cause to be omitted, full, true, and correct entries in those accounts, records, or memoranda, of all facts and transactions pertaining to the interest or activities in the brine industry of that person as may be required by the Oil and Gas Commission under authority given in this subchapter or by any rule, regulation, or order made hereunder; or

(4) Remove out of the jurisdiction of the state, or who shall mutilate, alter, or by any other means falsify, any book, record, or other paper made under this subchapter.

(b) Any person who knowingly and willfully violates any provision of this subchapter or of any rule, regulation, or order of the commission made hereunder shall, in the event a penalty for the violation is not otherwise provided in this subchapter, be subject to a penalty of not to exceed one thousand dollars (\$1,000) a day for each and every day of the violation. For each and every act of violation, the penalty shall be recovered in a suit in the circuit court of the county where the defendant resides, or in the county of the residence of any defendant if there is more than one (1) defendant, or in the circuit court of the county where the violation took place. The place of suit shall be selected by the commission, and the suit, by direction of the commission, shall be instituted and conducted in the name of the commission by the attorney for the commission or by the Attorney General or under his or her direction by the prosecuting attorney of the county where the suit is instituted.

(c) Any person knowingly and willfully aiding or abetting any other person in the violation of any provision of this subchapter or any rule, regulation, or order made hereunder shall be subject to the same penalties as are prescribed herein for the violation by the other person.

History. Acts 1979, No. 937, § 19; A.S.A. 1947, § 53-1319.

15-76-304. Injunctions by the commission.

(a) Whenever it shall appear that any person is violating, or threatening to violate, any provision of this subchapter or any rule, regulation, or order made thereunder by any act done in the operation of any well for the production of brine or the injection of effluent into an aquifer for disposal or injection purposes or by omitting any act required to be done thereunder, the Oil and Gas Commission, through its counsel or the Attorney General, may bring suit against that person in the circuit court in the county in which the well in question is located to restrain the person from continuing the violation or from carrying out the threat of violation. In that suit, the commission may obtain injunctions, prohibitory and mandatory, including temporary restraining orders and temporary injunctions as the facts may warrant, including, when appropriate, an injunction restraining any person from producing brine or injecting effluent into an aquifer.

(b) If the defendant cannot be personally served with summons in that county, personal jurisdiction of that defendant in that suit may be obtained by service made on any employee or agent of that defendant working on or about any well involved in that suit and by the commission mailing a copy of the complaint in the action to the defendant at the address of the defendant then recorded with the director of the commission.

History. Acts 1979, No. 937, § 16;
A.S.A. 1947, § 53-1316.

15-76-305. Injunctions against the commission.

(a) No temporary restraining order or injunction of any kind shall be granted against the Oil and Gas Commission or members thereof or against the Attorney General or against any agent, employee, or representative of the commission restraining the commission or any of its members, agents, employees, or representatives or the Attorney General from enforcing any provision of this subchapter or any rule, regulation, or order made hereunder, except after three (3) days' notice served upon some person in the principal office of the commission of the time, place, and court before which application for the order shall be made.

(b) If the commission shall so request, it shall be entitled to a trial on the merits within ten (10) days after the granting of any temporary order. If the plaintiff is not ready for trial at that time, the court shall be authorized to dissolve the temporary restraining order.

History. Acts 1979, No. 937, § 15;
A.S.A. 1947, § 53-1315.

15-76-306. Authority of the commission.

(a) The Oil and Gas Commission shall have jurisdiction of and authority over all persons and property necessary to administer and enforce effectively the provisions of this subchapter.

(b) The commission shall have the authority and it shall be its duty to make inquiries it deems proper to determine whether or not waste over which it has jurisdiction exists or to determine whether the correlative rights of owners are being protected. In the exercise of this duty, the commission shall have the authority to:

- (1) Make reasonable investigations and inspections;
- (2) Examine properties, leases, papers, books, and records;
- (3) Examine, check, test, and gauge brine wells, injection wells, and pipelines;
- (4) Hold hearings;
- (5) Require the keeping of records and the making of reports; and
- (6) Take such action as may be reasonably necessary to enforce this subchapter.

(c) The commission shall have the authority to make, after hearing and notice as provided in this section, such reasonable rules, regulations, and orders as may be necessary from time to time in the proper administration and enforcement of this subchapter, including rules, regulations, or orders for the following purposes:

- (1) To form brine production units;
- (2) To require the drilling, casing, and plugging of wells to be done in such a manner as to prevent the escape of brine and effluent from one stratum to another, to prevent the pollution of fresh water supplies by brine and effluent, and to require reasonable financial assurance acceptable to the commission conditioned for the performance of the duty to plug each dry hole or abandoned well;
- (3) To require the making of reports showing the location of brine wells utilized for production and of injection wells used for disposal and the filing of logs and drilling records for those wells;
- (4) To require the return of the brine to the same formation from which it was produced unless the commission authorizes the disposal of effluent into one (1) or more other formations upon finding that neither underground damage nor waste results therefrom;
- (5) To prevent the drowning by brine and effluent of any stratum or part thereof capable of producing oil or gas in paying quantities;
- (6) To prevent "blowouts", "caving", and "seepage" in the sense that conditions indicated by these terms are generally understood;
- (7) To identify the ownership of all wells utilized for producing brine and of all injection wells and all pipelines, plants, ponds, structures, and storage facilities;
- (8) To regulate the "shooting", perforating, and chemical treatment of wells;
- (9) To regulate the introduction or injection of effluent and other substances into an aquifer;

(10)(A) To regulate the spacing of wells for the production of brine and injection wells for the introduction of effluent into an aquifer.

(B) However, the commission shall have no authority to allow wells or other installations on the surface of lands without the consent of the surface owner;

(11) To formulate rules and regulations for the proper transportation of brine from the producing wells to the plant and from the plant to the injection wells and for the maintenance and surveillance of the transportation facilities; and

(12) To prevent, so far as is practical, reasonably avoidable drainage between brine production units.

(d)(1) The commission is authorized to assess each producer of brine a charge not to exceed fifty cents (\$0.50) on each one thousand (1,000) barrels, each of which contains forty-two (42) United States gallons, of brine produced and saved or sold for purposes of the extraction of chemical substances therefrom.

(2) All moneys so collected shall be deposited into the Oil and Gas Commission Fund and used solely to pay the expenses and other costs of the commission.

(e) Before the commission implements the collection process of any increase in the millage assessments that may be authorized by law on each one thousand (1,000) barrels of brine produced and saved or sold for purposes of chemical extraction, the commission shall first seek review from the Legislative Council or the Joint Budget Committee.

History. Acts 1979, No. 937, § 3; A.S.A. 1947, § 53-1303; Acts 2001, No. 1188, §§ 2, 3; 2005, No. 1267, § 5.

Amendments. The 2005 amendment substituted “provided in this section” for

“hereinafter provided” in (c); substituted “financial assurance acceptable to the commission” for “bond” in (c)(2)(C); and substituted “for those wells” for “therefore” in (c)(3).

CASE NOTES

Construction.

Reading the Brine Production Act, § 15-76-301 et seq., with the Administrative Procedures Act, § 25-15-212(g), it appeared that the correct procedure for the circuit court to follow was to limit its review to the record and allow the parties to introduce evidence only for the purpose of showing the Arkansas Oil and Gas Commission’s order was invalid or unrea-

sonable; the Brine Production Act does not allow a de novo review of orders issued by the Commission, but permits additional evidence relating to procedural irregularities before the Commission or where there was good reason for failure to present that evidence to the Commission. *Great Lakes Chem. Corp. v. Bruner*, 368 Ark. 74, 243 S.W.3d 285 (2006).

15-76-307. Procedure and rules of the commission.

(a) The Oil and Gas Commission shall prescribe its rules of order and procedure with respect to all hearings or proceedings hereunder in accordance with and as limited by the laws of this state applicable to hearings and proceedings before the commission under other acts of this state, including provisions of law regarding notice and hearing and

provisions of law regarding the promulgation by the commission of rules, regulations, and orders, including changes, renewals, or extensions thereof, and including emergency promulgations.

(b) No rule, regulation, or order, including change, renewal, or extension thereof, shall, in the absence of an emergency, be made by the commission under the provisions of this subchapter except after a public hearing upon at least twenty (20) days' notice given in the manner and form as may be prescribed by the commission. Such public hearing shall be held at such time and place and in such manner as may be prescribed by the commission. Any person having any interest in the subject matter of the hearing shall be entitled to be heard.

(c) In the event an emergency is found to exist by the commission which, in its judgment, requires the making, changing, renewal, or extension of a rule, regulation, or order without first having a hearing, such emergency rule, regulation, or order shall have the same validity as if a hearing with respect to the rule, regulation, or order had been held after due notice. The emergency rule, regulation, or order permitted by this section shall remain in force no longer than sixty (60) days from its effective date, and, in any event, it shall expire when the rule, regulation, or order made after due notice and hearing with respect to the subject matter of such emergency rule, regulation, or order becomes effective.

(d) Should the commission elect to give notice by personal service, service may be made by any officer authorized to serve process or by any agent of the commission in the same manner as is provided by law for the service of summons in civil actions in the circuit courts of this state. Proof of the service by the agent shall be by the affidavit of the person making personal service.

(e) All rules, regulations, and orders made by the commission shall be in writing and shall be entered in full by the director in a book to be kept for such purpose by the commission. This book shall be a public record and be open to inspection at all times during reasonable office hours. A copy of such rule, regulation, or order, certified by the director, shall be received in evidence in all courts of this state with the same effect as the original.

(f) Any interested person shall have the right to have the commission call a hearing for the purpose of taking action in respect to any matter within the jurisdiction of the commission by making a request therefor in writing and upon payment of a fee of two hundred fifty dollars (\$250) or such sum as the commission may prescribe for each application for hearing or other proceeding before it under this subchapter. However, in no event shall the fee exceed five hundred dollars (\$500). Upon the receipt of the request and fee, the commission shall promptly call a hearing thereon and, with all convenient speed and in any event within thirty (30) days of the date of the conclusion of the hearing, shall take action with regard to the subject matter thereof as it deems appropriate.

History. Acts 1979, No. 937, § 4; 1981, No. 264, § 1; A.S.A. 1947, § 53-1304.

CASE NOTES

Notice.

Subsection (b) of this section provides the commission with the authority to prescribe the manner and form of the notice given of the public hearing that is re-

quired before the commission promulgates or issues any rule, regulation or order. *Atlanta Exploration, Inc. v. Ethyl Corp.*, 301 Ark. 331, 784 S.W.2d 150 (1990).

15-76-308. Formation of brine production units.

(a) All producers, as defined in § 15-76-302, may make application to the Oil and Gas Commission for the establishment of brine production units. Each application shall be scheduled for public hearing by the commission to be held no later than the next regularly scheduled hearing of the commission that will afford proper notice to be given.

(b) A brine production unit established by order of the commission hereunder shall comprise no fewer than one thousand two hundred eighty (1,280) contiguous surface acres which are reasonably established to be underlain by a common aquifer.

(c) A proposed unit shall be approved by the commission if the existing or proposed plan of development is such as to drain efficiently the area of the unit and to protect the correlative rights of each owner therein. Each unit as created by the commission hereunder shall constitute a unit as long as a producing well is located therein which is capable of producing brine in paying quantities.

History. Acts 1979, No. 937, § 5; A.S.A. 1947, § 53-1305.

15-76-309. Petition for formation of a brine production unit.

(a) A petition for formation of a brine production unit may be filed by a producer and shall contain the following:

- (1) A description of the proposed brine production unit;
- (2) A statement of the plan of development and operation thereof;
- (3) All geological and engineering data necessary for the Oil and Gas Commission to be fully advised of the feasibility of the proposed plan;
- (4) A statement detailing all costs and expenses chargeable to the proposed unit and a statement of all credits due against costs and expenses;
- (5) A plat of such proposed unit which indicates the tracts or parcels of land included therein and the location of all wells then located within the proposed unit for both the production of brine and the injection or disposal of effluent and the proposed location of each well that is proposed to be drilled for both production and injection or disposal purposes;

(6) A list of owners within the unit, including the brine, interest and last known address of each such owner; and

(7) A statement that the petitioner has valid and subsisting leases or otherwise owns or controls the right to produce brine from not less than seventy-five percent (75%) of the entire area of the proposed brine production unit. The petitioner may not combine its leases or other rights to produce brine, relative to an existing unit, with leases or other rights to produce brine necessary to achieve the seventy-five percent (75%) lease requirement to form a separate unit adjacent to the existing unit.

History. Acts 1979, No. 937, § 6; A.S.A. 1947, § 53-1306.

CASE NOTES

Cited: Atlanta Exploration, Inc. v. Ethyl Corp., 301 Ark. 331, 784 S.W.2d 150 (1990).

15-76-310. Order requiring unit operation — In general.

(a) The Oil and Gas Commission, upon the application of any producer and upon the circumstances set forth in this section and §§ 15-76-311 and 15-76-313 — 15-76-315 shall enter its order integrating all tracts and interests in the unit, and all lands therein shall be developed and operated as a unit.

(b) All orders requiring integration shall be made after notice and hearing and shall be upon just and reasonable terms and conditions and will afford the owner of each tract or interest in the unit the opportunity to recover or receive his or her just and equitable share of brine in the unit.

(c) A copy of the order shall be sent or otherwise made available to each owner in the unit.

(d) The order shall be effective from the date set by the commission as to and binding upon each person then or thereafter owning an interest in the unit, or in brine produced therefrom or the proceeds thereof.

History. Acts 1979, No. 937, § 6; A.S.A. 1947, § 53-1306.

CASE NOTES

Cited: Atlanta Exploration, Inc. v. Ethyl Corp., 301 Ark. 331, 784 S.W.2d 150 (1990).

15-76-311. Contents of order.

The order requiring the operation of an area as a brine production unit shall include:

(1) A description of the area included within such unit;

- (2) The surface area of each tract in the proposed unit;
- (3) A provision for any credits and charges to be made in the adjustment among the owners in the unit for their allocated costs of the total investment in wells, both for production and injection or disposal purposes, pipelines, pumps, machinery, materials, and equipment required by such brine operation;
- (4) A statement of the tangible and intangible expenses of the development and operation of the unit, including capital investments required in the development and operation thereof, exclusive of the plant of the producer, to be charged to each tract in the unit in the same proportion that the tract shares in the production from such unit;
- (5) The time and manner in which all owners in the unit who may desire to pay their share of the costs outlined in subdivision (4) of this section and participate in the operations of the unit may elect to do so;
- (6) The time at which the unit operation shall commence and the approval by the Oil and Gas Commission of the plan of development and operation of the unit, including, but not limited to, the number and location of wells to be drilled within such unit for both production and injection or disposal purposes and the approximate date upon which the proposed plan of development is to be commenced and completed. However, the commission shall have no authority to allow wells or other installations on the surface of lands without the consent of the surface owner;
- (7) The name of the operator who shall drill, complete, or operate the wells within the unit; and
- (8) Those additional provisions which are consistent with this subchapter and which the commission determines to be appropriate for the prevention of waste and the protection of correlative rights.

History. Acts 1979, No. 937, § 6; A.S.A. 1947, § 53-1306.

15-76-312. Unlawful drainage — Unit inclusion or accounting.

- (a) Any owner of an interest in a tract which is adjacent to a brine production unit formed by the Oil and Gas Commission and which is not included in that unit may petition the commission to have the tract included in the unit, and the commission shall issue its order after reasonable notice and hearing to include the tract under the same terms and conditions as those then existing with respect to other tracts in the unit, provided that it is demonstrated to the satisfaction of the commission that the tract is being unlawfully drained or is in imminent danger of being so drained through the operations of the adjacent unit.
- (b)(1) Any owner of an interest or interests in brine, which are neither included in nor adjacent to a unit and which are being unlawfully drained by the actions of any producer, may petition the commission for an accounting for royalty or other compensation due from the producer.

(2) After investigating the claim presented in the petition and finding probable cause to believe the claims presented in the petition to be meritorious and after reasonable notice and hearing and subsequent finding that unlawful drainage has occurred, the commission shall issue its order:

(A) Stating the amount of royalty or other compensation then due and owing, as well as the manner of calculating the amount of royalty or other compensation subsequently due and owing to the owner; and

(B) Requiring the producer to pay over the amounts to the owner.

(3) For purposes hereof, the amount of royalty or other compensation due and owing to the owner and the manner of calculating any subsequent amount of royalty or other compensation shall be determined in accordance with § 15-76-315 as if the owner were included in a unit.

(4) In the event that the producer fails to account to the owner as provided in the order of the commission, the commission shall seek to enjoin the operations of the producer responsible for the unlawful drainage. The owner, in any action in a court of this state may recover up to three (3) times the amount of royalty or other compensation found to be due and owing by the commission upon a finding by a court that the interest in brine of the owner has been unlawfully drained by the actions of the producer.

(c) As used in this section, "unlawful drainage" or "unlawfully drained" shall be the withdrawal or removal of brine by production or displacement which deprives the owner thereof of his or her fair and equitable share of brine in violation of his or her correlative rights.

History. Acts 1979, No. 937, § 6; A.S.A. 1947, § 53-1306.

15-76-313. Operator.

(a) The producer who either has incurred or shall incur the greater share or portion of the capital investment required under the plan of development and operation of the unit shall be designated by the Oil and Gas Commission as operator unless the producer refuses to serve as operator or agrees to the designation of another person to act in that capacity.

(b) The operator so designated shall receive payments of amounts due and owing from owners and shall cause disbursements of amounts due and owing with respect to unleased interests in the unit, including the annual royalty provided for in § 15-76-314.

(c) Neither the order requiring operation of an area as a unit nor any other provision of this subchapter shall be construed as granting an operator any rights with respect to the surface of any tracts in a unit, nor does the subchapter deprive any landowner of any surface rights.

History. Acts 1979, No. 937, § 6; A.S.A. 1947, § 53-1306.

15-76-314. Participation by owners and royalties.

(a) Upon the establishment of a unit, each owner of an unleased interest therein shall elect within sixty (60) days from the effective date of the order establishing such unit either to participate affirmatively in the operation of the unit and the production of brine therefrom or to transfer his or her interest in the brine to the participating producers thereof upon such terms as are hereinafter set forth. The election shall be made in writing to the operator as otherwise provided in the order establishing the unit, provided that, if no such written election is made within the sixty (60) days, the nonelecting owner shall be deemed to have transferred his or her interest to the operator as provided herein.

(b) If an owner of an unleased interest elects to participate, he or she shall pay his or her share of the costs set forth in § 15-76-311 and agree to pay his or her share of the additional costs to be incurred in the drilling, equipping, and operating of each completed well within the unit. A participating owner shall have the option, which shall be exercised at the time of the election to participate, either to:

(1) Take his or her just and equitable share of the brine produced from the unit in kind and, if required by the Oil and Gas Commission, return it, after his or her use, to disposal wells within the unit; or

(2) Receive the value of his or her just and equitable share of the brine produced from the unit.

(c) If, at any time or for any reason, an owner who has elected to participate defaults in any payments due and owing to the operator or by written notice manifests his or her intention to withdraw from active participation, the owner shall be deemed to have transferred all of his or her interests and rights in the unit to the operator for a reasonable consideration and on a reasonable basis which, in the absence of agreement between the parties, shall be determined by the commission, who, in addition to the other consideration granted to the operator, shall assess a penalty against the owner. The transfer may be either a permanent transfer or may be for a limited period pending recoupment by the operator out of the share of production attributable to the interest so transferred of an amount equal to those costs that would have been borne by the transferring party had he or she continued to participate in the operations conducted pursuant to the plan of development plus an additional sum to be fixed by the commission.

(d) If an owner elects not to participate affirmatively in the development of the unit and the production of the brine, he or she shall be deemed to have transferred his or her right to produce brine to the operator for the period of time for which the unit is operative for a reasonable consideration and on a reasonable basis which, in the absence of agreement between the parties, shall be determined by the commission. Any transfer, the terms of which are established by the commission, shall be either a permanent transfer or a transfer for a limited period pending recoupment by the operator, from the nonparticipating owner's just and equitable share of the brine produced from

the unit, of an amount equal to those costs which the nonparticipating owner would have borne had he or she elected to participate affirmatively in the development of the unit and the production of brine therefrom plus an additional amount assessed as a risk factor by the commission.

(e) Each owner of an unleased interest in a unit shall be deemed to be the owner of a royalty interest equal to one-eighth ($\frac{1}{8}$) of the value of his or her just and equitable share of the brine produced from the unit, and the royalty interest shall not be chargeable with any of the costs of the development and operation of the unit.

(f) The provisions of this section shall not alter, modify, or otherwise amend the terms of any lease or agreement with respect to payments of royalty or in lieu of royalty in force and effect as of July 20, 1979, or which may be executed after that date.

History. Acts 1979, No. 937, § 7; A.S.A. 1947, § 53-1307.

15-76-315. Valuation of brine.

(a)(1)(A) The value of brine during any given year with respect to any unit established hereunder and for all purposes hereof shall be deemed to be the average price at which the operator of the unit has purchased or sold brine in Arkansas adjusted to reflect concentrations of ions, temperature, other relevant physical and chemical specifications, and delivery point.

(B) However, for purposes of this subchapter, the value shall not apply to any unit created hereunder until there shall have been actual bona fide sales or purchases of brine by the operator in sufficient volumes and under such circumstances as would establish a bona fide market value for brine from that unit.

(2) In any action by any owner against the operator of the unit for an appropriate accounting for royalty, the burden of proof that the value as determined hereunder constitutes a fair and reasonable market value of brine produced from the unit shall be upon the operator of the unit.

(3) However, no valuation of brine or any other alternate method of computing royalty or in lieu of royalty shall ever result in compensation which is less than thirty-two dollars (\$32.00) per acre per year, as increased or decreased annually based on changes in the Producer Price Index for Intermediate Materials, Supplies and Components published by the United States Department of Labor, Bureau of Labor Statistics, or its successor.

(4)(A) The adjustment will be made effective as of June 1 of each year and will remain effective for payments made from June 1 of that year until May 31 of the following year.

(B) The adjustment made each year will be based on the change in the index from December of the previous year relative to the base index of March, 1995.

(C) The formula to make the adjustment is as follows:

New in-lieu royalty payment = Base in-lieu royalty payment multiplied times A divided by B

Where:

(i) Base in-lieu royalty payment = \$32.00 per acre;

(ii) A = Index for the month of December prior to the year the adjustment is made. The index is the Producer Price Index for Intermediate Materials, Supplies and Components as published by the United States Department of Labor, Bureau of Labor Statistics, in Producer Price Indexes Table 2 for selected commodity groupings;

(iii) B = The March, 1995, Producer Price Index for Intermediate Materials, Supplies and Components as published by the United States Department of Labor, Bureau of Labor Statistics, in Producer Price Indexes Table 2 for selected commodity groupings.

(D)(i) The base price in lieu of royalty payment of thirty-two dollars (\$32.00) per acre will remain effective from April 1, 1995, until May 31, 1996.

(ii) The first adjustment to the base payment will be made effective as of June 1, 1996, and will remain effective for the following year until May 31, 1997.

(iii) Successive adjustments will be made effective as of June 1 each year thereafter and shall remain in effect until May 31 of the following year.

(b)(1) In the event that, during a given year, an operator makes no sales or purchases of brine qualifying for use under subsection (a) of this section, the value of brine for that year for brine produced by the operator from a particular unit for all purposes hereof shall be determined by the Oil and Gas Commission by multiplying the number of acres in that particular unit by eight (8) times the weighted average of lease compensation per acre or other in lieu of royalty payment agreed to between the producer thereof and the owners of brine interests in that unit, divided by the total production of brine in barrels for the given year.

(2)(A) If there are no sales or purchases of brine for two (2) or more consecutive years, the value of brine for each consecutive year after the first year in which there are no such sales shall be the value initially determined above, increased or decreased annually using the Producer Price Index for Intermediate Materials, Supplies and Components published by the United States Department of Labor, Bureau of Labor Statistics, in Producer Price Indexes Table 2 for selected commodity groupings.

(B) The adjustment will be made prior to June 1 and the new price per acre will be effective on June 1 of each year using the value of the index for the previous December based on the change in the index from March, 1995, to the previous December.

(C) The formula to make the adjustment is as set forth in subdivision (a)(4)(C) of this section.

(3) For purposes of calculating the value of the royalty interest under § 15-76-314(e), the value of brine as initially determined and as

increased or decreased under this subsection shall not be less than the value of brine as initially determined under this subsection by utilizing an average annual lease compensation or payment in lieu of royalty equivalent to thirty-two dollars (\$32.00) per acre.

(c)(1) In addition to any other amounts due and owing by the producer or producers of any unit to the owners therein, the producer or producers shall account separately and on a fair and equitable basis to each owner in the unit for all substances which are found by the commission to be profitably extracted from brine by a producer and which were not extracted by a producer on January 1, 1979.

(2) Whether or not any such substance is extracted profitably shall be determined by the Oil and Gas Commission on the basis of the value at the time of extraction, without interest, after deducting all costs of producing and recovering the same.

(3) The accounting by the producer shall be on a quarterly basis and shall begin on whichever comes first:

(A) The date of filing of a petition for an accounting; or

(B) The time of the profitable extraction of other substances.

History. Acts 1979, No. 937, § 8; A.S.A. 1947, § 53-1308; Acts 1995, No. 1287, § 1.

15-76-316. Production from tracts within unit.

The portion of the brine produced from the unit and allocated to any particular tract shall be deemed, for all purposes, to have been actually produced from that tract, and operations for the production of brine from any part of the unit conducted pursuant to the order of the Oil and Gas Commission shall be deemed for all purposes to be operations for the production of brine from each separate tract in the integrated area of the unit.

History. Acts 1979, No. 937, § 9; A.S.A. 1947, § 53-1309.

15-76-317. Liability for unit expenses.

The liability of each owner in a unit for the payment of unit expenses shall at all times be several and not joint or collective. In no event shall an owner in a unit be chargeable with, directly or indirectly, more than the amount charged to his or her interests in such unit pursuant to the order of the Oil and Gas Commission requiring the operation of the area as a brine production unit.

History. Acts 1979, No. 937, § 10; A.S.A. 1947, § 53-1310.

15-76-318. Drilling permits — Fees.

(a) Before any well shall be drilled either in search of brine or for the injection of effluent, the person desiring to drill the well shall notify the Oil and Gas Commission upon the form the commission may prescribe and shall pay a fee of one hundred fifty dollars (\$150) or the sum the commission may prescribe for each well. However, in no event shall the fee exceed three hundred dollars (\$300). The drilling of any such well is prohibited until notice is given and the fee has been paid and permit granted.

(b) Each application for the drilling of a well for the production of brine or for the purpose of injecting effluent into an aquifer shall include the complete mailing address of the applicant or each applicant, which address shall be the address of each person involved in accordance with the records of the director until the address is changed on the records of the commission after written request.

History. Acts 1979, No. 937, § 11; 1981, No. 264, § 2; A.S.A. 1947, § 53-1311.

15-76-319. Abandoned wells.

(a) Each abandoned well shall be plugged in the manner and within the time required by regulations prescribed by the Oil and Gas Commission, and the owner of the well shall give notice, upon the form the commission may prescribe, of the owner's intention to abandon any well.

(b) No well shall be abandoned until notice has been given, and no fee shall be required to be paid with the notice.

History. Acts 1979, No. 937, § 12; 1981, No. 264, § 4; A.S.A. 1947, § 53-1312.

15-76-320. Antitrust.

The formation of a brine production unit as provided in this subchapter and the operation of the unit under order of the Oil and Gas Commission shall not be a violation of any statute of this state relating to trusts, monopolies, contracts, or combinations in restraint of trade.

History. Acts 1979, No. 937, § 13; A.S.A. 1947, § 53-1313.

15-76-321. Judicial review.

(a) Any interested person adversely affected by any provisions of this subchapter or by any rule, regulation, or order made by the Oil and Gas Commission hereunder, or by any act done or threatened hereunder, and who has exhausted his or her administrative remedy, may obtain court review and seek relief by a suit for injunction against the

commission, as defendant, or the members thereof, by suit in the circuit court of the county in which the property involved is located.

(b) The suit shall have precedence over all other causes, proceedings, or suits on the docket of a different nature, and the attorney representing the commission may have the case set for trial after ten (10) days' notice to the plaintiff or his or her attorney.

(c) In the trial, the burden of proof shall be upon the plaintiff, and all pertinent evidence with respect to the validity and reasonableness of the order of the commission complained of shall be admissible.

(d) The statute, provision of this subchapter, or rule, regulation, or order complained of shall be taken as prima facie valid, and the presumption shall not be overcome, in connection with any application for injunctive relief, including a temporary restraining order, by a verified bill or affidavit of, or in behalf of, the applicant.

(e) The right of review accorded by this section shall be inclusive of all other remedies, but the right of appeal shall lie as hereinafter set forth.

History. Acts 1979, No. 937, § 14;
A.S.A. 1947, § 53-1314.

15-76-322. Appellate procedure.

In all proceedings brought under authority of this subchapter or of any rule, regulation, or order issued hereunder, and in all proceedings instituted for the purpose of contesting the validity of any provisions of this subchapter or of any rule, regulation, or order issued hereunder, appeals may be taken in accordance with the general laws of the State of Arkansas relating to appeals. However, in all appeals from judgments or decrees in suits to contest the validity of any provision of this subchapter or any rule, regulation, or order of the Oil and Gas Commission hereunder, the appeals, when docketed in the Supreme Court, shall take precedence over other cases on the docket of the court and may be advanced as the court may order and direct.

History. Acts 1979, No. 937, § 17;
A.S.A. 1947, § 53-1317.

15-76-323. Subpoena power of the commission.

(a) The Oil and Gas Commission is empowered to issue subpoenas for witnesses, to require their attendance in the giving of testimony before it, and to require the production of books, papers, and records in any proceeding before the commission as may be material upon questions lawfully before the commission. The subpoena shall be served by the sheriff or any other officer authorized by law to serve process in this state. No person shall be excused from attending and testifying or from producing books, papers, and records before the commission or court or from obedience to the subpoena of the commission or a court on the ground or for the reason that the testimony or evidence, documen-

tary or otherwise, required of him or her may tend to incriminate him or her or subject him or her to a penalty or forfeiture.

(b) Nothing contained in this section shall be construed as requiring any person to produce any books, papers, or records or to testify in response to any inquiry not pertinent to some question lawfully before the commission or court for determination. No natural person shall be subjected to criminal prosecution or to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she may be required to testify or produce evidence, documentary or otherwise, before the commission or court, or in obedience to its subpoena. No person testifying shall be exempted from prosecution and punishment for perjury committed in so testifying.

(c) In case of failure or refusal on the part of any person to comply with any subpoena issued by the commission, or in case of the refusal of any witness to testify or answer as to any matter regarding which he or she may be lawfully interrogated, any circuit court in this state, on application of the commission, may in term time or vacation issue an attachment for the person and compel him or her to comply with the subpoena and to attend before the commission and produce the documents and give his or her testimony upon matters, as may be lawfully required. The court shall have the power to punish for contempt as in case of disobedience of like subpoena issued by or from the court, or for a refusal to testify therein.

History. Acts 1979, No. 937, § 18;
A.S.A. 1947, § 53-1318.

15-76-324. Arkansas Department of Environmental Quality.

(a) Nothing contained in this subchapter shall affect the jurisdiction of the Arkansas Department of Environmental Quality over owners or producers of brine or the processing and disposal of brine with respect to water or air pollution control or other matters within its jurisdiction or the requirement that owners, producers, and processors apply for and obtain a permit from the department as provided by the Arkansas Water and Air Pollution Control Act, as amended, § 8-4-101 et seq.

(b) Nothing contained in this subchapter confers upon the Arkansas Pollution Control and Ecology Commission any authority or jurisdiction conferred by law upon the department or shall be deemed to amend the Arkansas Water and Air Pollution Control Act, as amended, § 8-4-101 et seq.

History. Acts 1979, No. 937, § 21;
A.S.A. 1947, § 53-1320; Acts 1999, No. 1164, § 155.

A.C.R.C. Notes. Acts 1997, No. 1219, § 2, provided: "Arkansas Department of Pollution Control & Ecology" renamed to 'Arkansas Department of Environmental Quality'.

"(a) Effective March 31, 1999, the 'Arkansas Department of Pollution Control & Ecology' or 'Department,' as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the 'Arkansas Department of Environmental Quality' is hereby established, succeeding to the general powers and re-

sponsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary le-

gal documents in order to effect this change by March 31, 1999.

“(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change.”

Index to Title 15 (40-76)

A

ABANDONED PROPERTY.

Brine production.

Abandoned wells, §15-76-319.

Oil and gas.

Plugging dry or abandoned wells,
§§15-72-216 to 15-72-218.

ACCIDENTS.

Oil and gas.

Transportation of compressed gases.
Liability generally, §15-75-109.

ACTIONS.

Oil and gas.

Nonpayment of proceeds, §15-74-603.
Spills of crude oil or produced water.
Surface owners or tenants, right of
action for remediation or
restoration, §15-72-219.
Standard gas measurement law.
Sale or delivery of gas by volume,
action for damages, §15-74-305.

Surface coal mining and reclamation.

Citizens actions, §15-58-309.

AFFIDAVITS.

Liquefied petroleum gas.

Containers bearing owner's
identification.
Unlawful use of containers,
§15-75-406.

Mines and minerals.

Claims on public lands.
Assessment work, §15-56-203.

Oil and gas.

Gasoline, fuel, illuminating and
heating oil.
Testing of untested oil or gasoline
before sale.
Affidavit of making test,
§15-74-409.

AGENTS.

Oil and gas, commissioned agents of major oil companies.

Businesses and products involving
federal energy agency fuel
allocation.
Contracts requiring agents to make
certain purchases or payments
void, §15-74-502.
Misdemeanors, §15-74-502.

AGENTS —Cont'd

Oil and gas, commissioned agents of major oil companies —Cont'd

Businesses and products involving
federal energy agency fuel
allocation —Cont'd
Contracts requiring agents to make
certain purchases or payments
void —Cont'd
Regular price exception,
§15-74-502.
Separate offenses, §15-74-502.

AIDING AND ABETTING.

Oil and gas, §15-72-103.

ALCOHOLIC BEVERAGES.

Hunting accidents.

Implied consent to chemical test,
§15-42-127.

APPEALS.

Brine production.

Appellate procedure, §15-76-322.
Procedure on appeal, §15-76-322.
Judicial review, §15-76-321.

Mines and minerals.

Lease of mineral rights.
Validity of lessee's title, §15-56-302.

Oil and gas, §15-72-110.

Court review by aggrieved person,
§15-72-106.

Surface coal mining and reclamation.

Administrative review.
Costs, §15-58-213.
Judicial review, §15-58-212.
Costs, §15-58-213.

ARKANSAS HUNTING HERITAGE PROTECTION ACT, §§15-41-301

to 15-41-304.

Definitions, §15-41-303.

Legislative findings, §15-41-302.

Recreational hunting, §15-41-304.

Short title, §15-41-301.

ASSESSMENTS.

Mines and minerals.

Claims on public lands.
Affidavit of assessment work,
§15-56-203.

Oil and gas commission, §15-71-107.

Purchaser to deduct and remit
assessment to commission,
§15-71-108.

ASSESSMENTS —Cont'd

Oil and gas commission —Cont'd
Remission by producer, §15-71-108.

ATTORNEYS AT LAW.

Liquefied petroleum gas.
Employment of counsel by director,
§15-75-206.

Oil and gas.

Fees.
Proceeds.
Actions for nonpayment.
Award of attorney's fees,
§15-74-603.

Oil and gas commission.

Counsel for commission, §15-71-104.

ATTORNEYS' FEES.

Oil and gas.
Proceeds.
Actions for nonpayment.
Award of attorney's fees,
§15-74-603.
Spills of crude oil or produced water.
Actions by surface owners and
tenants for restoration or
remediation, §15-72-219.

AUCTIONS AND AUCTIONEERS.**Fishing.**

Taking fish from fish farm unlawful.
Confiscated property to be sold at
public auction, §15-43-330.

AUDITOR OF STATE.**Oil and gas.**

Payment of vouchers of commission,
§15-71-109.

B**BEAVERS.****Hunting.**

Control fund, §15-42-125.

BIRDS.**Double-crested cormorants.**

Elimination, §15-46-106.

Sanctuaries.

Generally, §§15-45-209 to 15-45-211.
State parks as bird sanctuaries,
§15-45-211.

BLOOD TESTS.**Hunting accidents.**

Implied consent to breath analysis,
§15-42-127.

BOARDS AND COMMISSIONS.**Oil and gas.**

Interstate oil compact commission,
§§15-72-902, 15-72-904.

BONDS, SURETY.**Geological survey.**

State geologist, §15-55-204.

Mines and minerals.

Lease of mineral rights.
Life tenants.
Trustee under control of court,
§15-56-406.

Quarry operations, §15-57-412.

Oil and gas.

Director of production and
conservation, §15-71-105.
Lease of oil, gas and mineral interests.
Trustee for remaindermen,
§§15-73-304, 15-73-306.

Quarry operations, §15-57-412.**Surface coal mining and
reclamation, §15-58-509.****Trusts and trustees.**

Lease of oil, gas and mineral interests.
Life estates.
Trustee for remaindermen,
§§15-73-304, 15-73-306.

BREATH TESTS.**Hunting accidents.**

Implied consent to breath analysis,
§15-42-127.

BRINE PRODUCTION.

Abandoned wells, §15-76-319.

Accounts and accounting.

Valuation of brine, §15-76-315.

Appeals.

Judicial review, §15-76-321.
Procedure on appeal, §15-76-322.

Declaration of policy, §15-76-301.**Definitions, §15-76-302.****Environmental quality department.**

Jurisdiction of department not
affected, §15-76-324.

Fees.

Drilling permits, §15-76-318.

From tracts within unit, §15-76-316.**Injunctions.**

Against commission, §15-76-305.
By commission, §15-76-304.

Judicial review, §15-76-321.

Procedure on appeal, §15-76-322.

Jurisdiction.

Oil and gas commission, §15-76-306.

Liability.

Unit expenses, §15-76-317.

Monopolies and restraint of trade.

Formation of units.

No violation of statutes, §15-76-320.

Oil and gas commission.

Administration and enforcement of
provisions, §15-76-301.

BRINE PRODUCTION —Cont'd**Oil and gas commission** —Cont'd

Authority, §15-76-306.

Defined, §15-76-302.

Injunctions.

Against commission, §15-76-305.

By commission, §15-76-304.

Jurisdiction, §15-76-306.

Procedure, §15-76-307.

Rules and regulations.

Promulgation by commission,
§15-76-307.Subpoena power of commission,
§15-76-323.**Orders.**Formation of brine production units,
§15-76-310.

Contents of order, §15-76-311.

Penalty, §15-76-303.**Permits.**

Drilling permits, §15-76-318.

Fees, §15-76-318.

Petitions.Formation of brine production units,
§15-76-309.**Policy declaration,** §15-76-301.**Royalties,** §15-76-314.**Rules and regulations,** §15-76-307.Promulgation by commission,
§15-76-307.**Severance tax.**

Drilling permits, §15-76-318.

Fees, §15-76-318.

Fees.

Drilling permits, §15-76-318.

Subpoenas.

Power of commission, §15-76-323.

Units.

Area, §15-76-308.

Defined, §15-76-302.

Formation, §15-76-308.

Orders for formation, §15-76-310.

Contents of formation, §15-76-311.

Petition for formation, §15-76-309.

Inclusion of adjacent tracts,
§15-76-312.

Liability for unit expenses, §15-76-317.

Monopolies and restraint of trade.

Formation of violation of statutes,
§15-76-320.

Operators.

Designation, §15-76-313.

Orders.

Formation of units, §15-76-310.

Contents of order, §15-76-311.

Participation by owners, §15-76-314.

Production from tracts within unit,
§15-76-316.**BRINE PRODUCTION** —Cont'd**Units** —Cont'd

Royalties, §15-76-314.

Unlawful drainage, §15-76-312.

Valuation of brine, §15-76-315.**Wells.**

Abandoned wells, §15-76-319.

Drilling permits, §15-76-318.

C**CAMPING.****Hunting.**

Deer season.

Regulations for camping.

Deer hunting camp on highways
prohibited, §15-43-206.**CHURCHES AND OTHER PLACES
OF WORSHIP.****Leases.**Oil, gas and mineral interests,
§15-73-202.**Oil and gas.**Lease of oil, gas and mineral interests,
§15-73-202.**CIVIL PROCEDURE.****Oil and gas.**

Commission, §15-71-111.

CLAIMS.**United States.**

Mines and minerals.

Claims on public lands, §§15-56-201
to 15-56-205.**COAL.****Lignite development,** §§15-55-401 to
15-55-405.**Mines and minerals.**Short line railroads, §§15-56-501 to
15-56-505.Surface coal mining and reclamation,
§§15-58-101 to 15-58-510.**Railroads.**Short line railroads, §§15-56-501 to
15-56-505.**Reclamation.**Surface coal mining and reclamation,
§§15-58-101 to 15-58-510.**Surface coal mining and
reclamation,** §§15-58-101 to
15-58-510.**COMMON CARRIERS.****Mines and minerals.**

Short line railroads.

Rights, powers and privileges of
common carrier, §15-56-503.

COMPACTS.**Oil and gas.**

Interstate compact to conserve oil and gas, §§15-72-901 to 15-72-904.

COMPRESSED GASES.

Transportation, §15-75-109.

CONFIDENTIALITY OF INFORMATION.**Oil and gas.**

Confidential treatment of reports, §15-72-805.

CONFLICTS OF INTEREST.**Oil and gas.**

Gasoline, fuel, illuminating and heating oil.

Manufacture or sale.

Inspectors not to be interested, §15-74-403.

Penalties.

Surface coal mining and reclamation, §15-58-206.

Surface coal mining and reclamation.

Penalties, §15-58-206.

Persons performing function or duty under act.

Financial interest in surface coal mining prohibited, §15-58-206.

CONSENT.**Hunting accidents.**

Tests for drugs and alcohol, implied consent, §15-42-127.

Liquefied petroleum gas.

Containers bearing owner's identification.

Use of container without consent of owner, §15-75-406.

CONSERVATION.**Game and fish.**

Wildlife habitat conservation on private lands.

Licensing agreements, §15-45-101.

Wildlife habitat conservation on private lands.

Licensing agreements, §15-45-101.

CONSTRUCTIVE SERVICE.**Warning orders.**

Oil and gas.

Illegal oil and gas.

Notice of proceedings, §§15-72-403, 15-72-404.

Partition, §15-73-403.

CONTAINERS.**Oil and gas.**

Identification of container, §15-75-406.

CONTRACTS.**Oil and gas.**

Weights and measures.

Standard gas measurement law.

Sale or delivery of gas by volume, §15-74-305.

CORMORANTS.**Double-crested cormorants.**

Elimination, §15-46-106.

CORPORATIONS.**Oil and gas.**

Disposal of salt water, §15-76-202.

Surface coal mining and reclamation.

Compliance with provisions, §15-58-105.

COSTS.**Oil and gas.**

Spills of crude oil or produced water, actions by surface owners and tenants for restoration or remediation, §15-72-219.

Surface coal mining and reclamation.

Administrative and judicial review, §15-58-213.

State abandoned mine reclamation program projects, §15-58-403.

COUNTIES.**Brine production.**

Violation of provisions, §15-76-303.

Game and fish.

Refuges.

Appraisal board in county, §15-45-209.

Damages to crop, §15-45-209.

COUNTY CLERKS.**Mercury refiners and businesses.**

Licenses.

Applications and licenses recorded by clerk, §15-60-109.

CRIMINAL LAW AND PROCEDURE.**Brine production,** §15-76-303.

Improper disposal of salt water, §15-76-201.

Dogs.

Running at large.

Enforcement of regulation by employees of game and fish commission, §15-41-113.

Fishing.

Barrel or pond nets, §15-43-324.

Electrical devices for stunning and taking fish, §15-43-316.

Enclosed lake or pond.

Taking fish from, §15-43-329.

CRIMINAL LAW AND PROCEDURE

—Cont'd

Fishing —Cont'd

Fish farm.

Taking fish from, §15-43-330.

Hoop nets, §15-43-324.

Licenses.

Fishing without license, §15-42-101.

Nonresident fishing license,
§15-42-107.Issuance in neighboring states,
§15-42-122.Public water withdrawal endangering
fish, §15-44-111.**Fish runways.**

Obstruction, §15-44-110.

Game and fish refuges.Entire state as wild fowl sanctuary,
§15-45-210.State parks as bird sanctuaries,
§15-45-211.**Hunting.**

Deer.

Firearms.

Negligent discharge while hunting
deer, §15-43-205.

Highways.

Deer hunting camp on,
§15-43-206.

Dogs.

Attempted theft or theft of licensed
dogs, §15-42-303.

Guides, §15-43-239.

Licenses.

Hunting without license, §15-42-101.

Issuance in neighboring states,
§15-42-122.

Setting fires, §15-43-107.

Shooting accidents.

Refusal to submit to tests for drugs
and alcohol, §15-42-127.Storage regulation for game animals
and birds, §15-44-108.**Liquefied petroleum gas**, §15-75-103.

Containers.

Unlawful use, §15-75-406.

Subpoenas of board.

Disobedience, §15-75-321.

Mercury refiners, §§15-60-102,
15-60-114.**Mines and minerals.**

Claims on public lands.

Indexed record books.

Failure or refusal of recorder to
keep index, §15-56-205.**CRIMINAL LAW AND PROCEDURE**

—Cont'd

Mines and minerals —Cont'd

Lease of mineral rights.

Failure of lessee to report output,
§15-56-311.**Oil and gas.**Commissioned agents of major oil
companies.Businesses and products involving
federal energy agency fuel
allocation.Contracts requiring agents to
make certain purchases or
payments, §15-74-502.Emergency set-aside programs,
§15-72-803.Gasoline, fuel, illuminating and
heating oil, §15-74-401.Condemnation of gasoline by
inspectors.Removal or alteration of placards
attached to pumps,
§15-74-406.

Records.

Falsifying or failure to keep,
§15-72-104.

Royalties.

Willful or malicious violations of
provisions, §15-74-701.

Safe drinking water act.

Willful violation, §15-72-104.

Weights and measures.

Discounting crude for waste,
shrinkage, etc., §15-74-203.**Seismic operations.**

Permit violations, §15-71-114.

**Surface coal mining and
reclamation.**

Conflicts of interest, §15-58-206.

False statement, representation or
certification, §15-58-306.Interfering with director or his agents,
§15-58-305.Violating condition of permit or order,
§15-58-304.**Weights and measures.**

Oil and gas.

Discounting crude for waste,
shrinkage, etc., §15-74-203.**CROPS.****Game and fish.**

Refuges.

Damages to crop, §15-45-209.

CROPS —Cont'd**Game and fish —Cont'd**

Wildlife causing crop damage,
§15-44-114.

D**DAMAGES.****Game and fish.**

Refuges.

County appraisal board.

Duty to determine damage done
by wildlife, §15-45-209.

Oil and gas.

Lease of oil, gas and mineral interests.

Forfeiture of leases.

Failure to release, §15-73-204.

Spills of crude oil or produced water,
§15-72-219.

DAMS AND RESERVOIRS.**Fishing.**

Runways for fish required, §15-44-110.

DECEDENTS' ESTATES.**Notice.**

Oil and gas drilling, §15-72-203.

Oil and gas.

Drilling.

Promotion, §15-72-701.

Surface owner notification,
§15-72-203.

Leasing, §15-73-309.

Ownership, §15-72-607.

Royalty payments, §15-74-604.

DEFENSES.**Liquefied petroleum gases.**

Affirmative defenses of providers,
§15-75-112.

DEFINED TERMS.**Active.**

Quarries, §15-57-402.

Affected governmental agency.

Surface coal mining and reclamation,
§15-58-104.

Affected land.

Open-cut land reclamation,
§15-57-303.

Quarries, §15-57-402.

Appliances.

Liquefied petroleum gases, §15-75-102.

Aquifer.

Brine, §15-76-302.

Assignment.

Oil and gas production and
conservation, §15-72-802.

Brine, §15-76-302.

Brine production unit, §15-76-302.

DEFINED TERMS —Cont'd**Broker.**

Oil and gas production and
conservation, §15-72-802.

Certificate of competency.

Liquefied petroleum gases, §15-75-301.

Citation.

Quarries, §15-57-402.

Coal.

Surface coal mining and reclamation,
§15-58-104.

Commercial oil pool.

Oil and gas production and
conservation, §15-72-701.

Commercial purposes.

Open-cut land reclamation,
§15-57-303.

Commission.

Hunting heritage protection act,
§15-41-303.

Quarries, §15-57-402.

Commission-managed lands.

Hunting heritage protection act,
§15-41-303.

Conservation act.

Oil and gas production and
conservation, §15-72-701.

Consumer.

Oil and gas production and
conservation, §15-72-802.

Container.

Liquefied petroleum gases, §15-75-102.

Cubic foot of gas.

Measurement and inspection of oil and
gas, §15-74-302.

Cycling.

Oil and gas production and
conservation, §15-72-501.

Dealer.

Liquefied petroleum gases, §15-75-102.

Default.

Quarries, §15-57-402.

Drilling unit.

Oil and gas production and
conservation, §15-72-302.

Effluent.

Brine, §15-76-302.

Exhausted quarry, §15-57-402.**Fees.**

Quarries, §15-57-402.

Field.

Oil and gas production and
conservation, §§15-72-102,
15-72-701.

Final cut.

Open-cut land reclamation,
§15-57-303.

DEFINED TERMS —Cont'd**Final floor.**

Quarries, §15-57-402.

Final wall.

Quarries, §15-57-402.

Fine.

Quarries, §15-57-402.

Firm.

Oil and gas production and conservation, §15-72-802.

First purchaser.

Measurement and inspection of oil and gas, §15-74-601.

Fund.

Surface coal mining and reclamation, §15-58-104.

Gas.

Oil and gas production and conservation, §15-72-102.

Gas condensate.

Oil and gas production and conservation, §15-72-501.

Gas drive.

Oil and gas production and conservation, §15-72-501.

Gas injection.

Oil and gas production and conservation, §15-72-501.

Guide.

Hunting and fishing regulations, §15-43-239.

High wall.

Open-cut land reclamation, §15-57-303.

Hunting.

Hunting heritage protection act, §15-41-303.

Illegal gas.

Oil and gas production and conservation, §15-72-102.

Illegal oil.

Oil and gas production and conservation, §15-72-102.

Illegal product.

Oil and gas production and conservation, §15-72-102.

Imminent danger to the health and safety of the public.

Surface coal mining and reclamation, §15-58-104.

Inactive status.

Quarries, §15-57-402.

Injection well, §15-76-302.**Jobber.**

Liquefied petroleum gases, §15-75-102.

Just and equitable share of brine, §15-76-302.**DEFINED TERMS —Cont'd****Lands eligible for remining.**

Surface coal mining and reclamation, §15-58-104.

Liquefied petroleum gases,

§15-75-102.

Liquefied petroleum gas systems,

§15-75-102.

Manufacturer.

Liquefied petroleum gases, §15-75-102.

Mineral.

Mineral lands and interests, §15-56-301.

Native gas.

Oil and gas production and conservation, §15-72-602.

Natural gas.

Oil and gas production and conservation, §15-72-602.

Natural gas public utility.

Oil and gas production and conservation, §15-72-602.

Notification in process.

Quarries, §15-57-402.

Notification of intent.

Quarries, §15-57-402.

Oil.

Oil and gas production and conservation, §§15-72-102, 15-72-701.

Open-cut mining, §15-57-303.**Operator.**

Oil and gas production and conservation, §§15-72-102, 15-72-201.

Open-cut land reclamation, §15-57-303.

Quarries, §15-57-402.

Surface coal mining and reclamation, §15-58-104.

Owner.

Brine, §§15-75-406, 15-76-302.

Oil and gas production and conservation, §§15-72-102, 15-72-701.

Participating area.

Oil and gas production and conservation, §15-72-701.

Peak.

Open-cut land reclamation, §15-57-303.

Permit.

Liquefied petroleum gases, §15-75-301.

Surface coal mining and reclamation, §15-58-104.

Permit term.

Open-cut land reclamation, §15-57-303.

DEFINED TERMS —Cont'd**Person.**

- Brine, §§15-75-406, 15-76-302.
- Liquefied petroleum gases, §15-75-102.
- Measurement and inspection of oil and gas, §15-74-501.
- Oil and gas production and conservation, §§15-72-102, 15-72-201, 15-72-701.
- Open-cut land reclamation, §15-57-303.
- Surface coal mining and reclamation, §15-58-104.

Petroleum products.

- Oil and gas production and conservation, §15-72-802.

Pit.

- Mining and reclamation, §15-57-303.

Pool.

- Oil and gas production and conservation, §§15-72-102, 15-72-701.

Pressure maintenance.

- Oil and gas production and conservation, §15-72-501.

Primary recovery.

- Oil and gas production and conservation, §15-72-501.

Prime supplier.

- Oil and gas production and conservation, §15-72-802.

Producer.

- Brine, §15-76-302.
- Oil and gas production and conservation, §15-72-102.

Product.

- Oil and gas production and conservation, §15-72-102.

Production facilities.

- Oil and gas, §15-71-110.

Production process.

- Oil and gas, §15-71-110.

Property line.

- Mining and reclamation, §15-57-315.

Property owner.

- Mining and reclamation, §15-57-315.

Purchaser.

- Oil and gas production and conservation, §15-72-802.

Quarry, §15-57-402.**Quarry rim, §15-57-402.****Reclamation for productive use.**

- Open-cut land reclamation, §15-57-303.

Reclamation plan.

- Quarries, §15-57-402.

Recycling.

- Oil and gas production and conservation, §15-72-501.

DEFINED TERMS —Cont'd**Repressuring.**

- Oil and gas production and conservation, §15-72-501.

Ridge.

- Open-cut land reclamation, §15-57-303.

Right-of-way.

- Open-cut land reclamation, §15-57-303.

Right-of-way holder.

- Mining and reclamation, §15-57-315.

Secondary recovery.

- Oil and gas production and conservation, §15-72-501.

Set-aside.

- Oil and gas production and conservation, §15-72-802.

Single owner.

- Hunting and fishing regulations, §15-43-301.

Small operator.

- Surface coal mining and reclamation, §15-58-104.

Spoil.

- Open-cut land reclamation, §15-57-303.

- Quarries, §15-57-402.

Standard cubic foot of gas.

- Measurement and inspection of oil and gas, §15-74-302.

Start up.

- Quarries, §15-57-402.

State abandoned mine reclamation program.

- Surface coal mining and reclamation, §15-58-104.

State program.

- Surface coal mining and reclamation, §15-58-104.

Supplier.

- Oil and gas production and conservation, §15-72-802.

Surface coal mining and reclamation operations,

- §15-58-104.

Surface owner.

- Oil and gas production and conservation, §15-72-201.

Tender.

- Oil and gas production and conservation, §15-72-102.

Topsoil.

- Quarries, §15-57-402.

Unanticipated event or condition.

- Surface coal mining and reclamation, §15-58-104.

DEFINED TERMS —Cont'd**Underground storage.**

Oil and gas production and conservation, §15-72-602.

Unit.

Brine, §15-76-302.

Unwarranted failure to comply.

Surface coal mining and reclamation, §15-58-104.

Vendor.

Liquefied petroleum gases, §15-75-102.

Waste.

Brine, §15-76-302.

Oil and gas production and conservation, §15-72-102.

Water drive.

Oil and gas production and conservation, §15-72-501.

Water flooding.

Oil and gas production and conservation, §15-72-501.

Water injection.

Oil and gas production and conservation, §15-72-501.

Waters of the state.

Natural resources.

Hunting and fishing regulations, §15-43-301.

DEPOSITS.**Geological survey.**

Moneys deposited into state treasury, §15-55-212.

DOCUMENTS.**Oil and gas commission.**

Summons and process.

Production of documents, §15-71-112.

Failure to produce documents, §15-71-112.

DOES.**Elections.**

Local option to determine doe killing area, §15-43-204.

Hunting regulations.

Local option to determine doe killing area, §15-43-204.

Ballots, §15-43-204.

Effect of election results, §15-43-204.

Petition for election, §15-43-204.

DOGS.**Running at large.**

Enforcement of regulation against dogs running at large.

Penalty for enforcement, §15-41-113.

DOWER AND CURTESY.**Oil and gas.**

Partition of oil and gas lease interests.

Effect of sale or lease, §15-73-408.

DRUGS AND CONTROLLED SUBSTANCES.**Hunting accidents.**

Implied consent to chemical test, §15-42-127.

DRUG TESTING.**Hunting accidents.**

Implied consent to drug test, §15-42-127.

DUCKS.**Hunting licenses.**

State duck stamp, §15-42-104.

E**ELECTIONS.****Deer.**

Does.

Local option to determine doe killing area, §15-43-204.

Hunting.

Doe killing area.

Local option to determine area, §15-43-204.

Ballots, §15-43-204.

Effect of election results, §15-43-204.

Special elections.

Doe killing area, election to redetermine, §15-43-204.

ELEEMOSYNARY INSTITUTIONS.**Leases.**

Oil, gas and mineral interests, §15-73-202.

Oil and gas.

Lease of oil, gas and mining interests, §15-73-202.

EMERGENCIES.**Liquefied petroleum gas.**

Filling of container of another's company during emergency, §15-75-406.

Shortage emergencies, §15-75-322.

EMINENT DOMAIN.**Mines and minerals.**

Short line railroads, §15-56-502.

EMINENT DOMAIN —Cont'd**Oil and gas.**

Gasoline, fuel, illuminating and heating oil.

Condemnation of gasoline by inspectors, §15-74-405.

Placards attached to gasoline pumps, §15-74-405.

Misdemeanor for removing or altering, §15-74-406.

Prosecution for violations, §15-74-405.

Surface coal mining and reclamation, §15-58-406.**ENDORSEMENTS.****Oil and gas.**

Lease of oil, gas and mineral interests.

Forfeiture of leases.

Failure to pay rental installment.

Endorsement of forfeiture by landowner, §15-73-205.

ENVIRONMENTAL IMPACT STATEMENTS.**Timber cut on lands belonging to game and fish commission.**

Required environmental impact statement, §15-41-108.

ENVIRONMENTAL PROTECTION.**Environmental impact statements.**

Timber cut on lands belonging to game and fish commission.

Required environmental impact statement, §15-41-108.

EVIDENCE.**Fishing.**

Prima facie evidence of fishing, §15-43-105.

Hunting.

Prima facie evidence of hunting, §15-43-105.

Liquefied petroleum gas.

Containers bearing owner's identification.

Unlawful use of containers, §15-75-406.

Oil and gas.

Commission.

Witnesses.

Procedure in case of refusal to testify, §15-71-112.

Partition of oil and gas lease interests.

Evidence authorizing lease, §15-73-407.

EXAMINATIONS.**Liquefied petroleum gas.**

Certification of handlers and installers, §15-75-303.

EXECUTION OF JUDGMENTS.**Mines and minerals.**

Lease of mineral rights.

Agreement subsequent to discharge of receiver, §15-56-309.

EXPLOSIVES.**Investigations.**

Liquefied petroleum gas, §15-75-209.

Liquefied petroleum gas.

Investigations, §15-75-209.

Oil and gas.

Transportation of compressed gases.

Accidents.

Liability generally, §15-75-109.

F**FARMS AND FARMING.****Fishing.**

Taking fish from fish farm unlawful, §15-43-330.

Penalty, §15-43-330.

FEDERAL AID.**Game and fish.**

Commission.

Hunter training and safety program.

Funds for program, §15-43-238.

FEES.**Brine production.**

Drilling permits, §15-76-318.

Liquefied petroleum gas.

Credited towards liquefied petroleum gas fund, §15-75-106.

Deposited in state treasury, §15-75-106.

Schedule of inspection and registration fees, §15-75-105.

Suspension of inspection and registration fees, §15-75-111.

Use, §15-75-106.

Mines and minerals.

Claims on public lands.

Recordation, §15-56-202.

Oil and gas.

Commission, §15-71-110.

Salt water wells into which debrominated brine is injected, §15-71-110.

Open-cut land reclamation.

Permit fees, §§15-57-311, 15-57-319.

Quarries, §15-57-414.**FINES.****Brine production, §15-76-303.**

Improper disposal of salt water, §15-76-201.

FINES —Cont'd**Dogs.**

Running at large.

Enforcement of regulation by employees of game and fish commission, §15-41-113.

Fishing.

Barrel or pond nets, §15-43-324.

Electrical devices for stunning and taking fish, §15-43-316.

Enclosed lake or pond.

Taking fish from, §15-43-329.

Fish farm.

Taking fish from, §15-43-330.

Hoop nets, §15-43-324.

Licenses.

Fishing without license, §15-42-101.
Nonresident fishing license, §15-42-107.

Public water withdrawal endangering fish, §15-44-111.

Fish runways.

Obstruction, §15-44-110.

Game and fish refuges.

Entire state as wild fowl sanctuary, §15-45-210.

State parks as bird sanctuaries, §15-45-211.

Hunting.

Accidents.

Refusal to submit to tests for drugs and alcohol, §15-42-127.

Deer.

Firearms.

Negligent discharge while hunting deer, §15-43-205.

Highways.

Deer hunting camp on, §15-43-206.

Guides, §15-43-239.

Licenses.

Hunting without license, §15-42-101.

Setting fires, §15-43-107.

Storage regulations for game animals and birds, §15-44-108.

Liquefied petroleum gas, §15-75-103.

Civil penalty, §15-75-323.

Subpoenas of board.

Disobedience, §15-75-321.

Unlawful use, §15-75-406.

Mercury refiners, §15-60-102.**Mines and minerals.**

Claims on public lands.

Indexed record books.

Failure or refusal of recorder to keep index, §15-56-205.

Oil and gas.

Emergency set-aside programs, §15-72-803.

FINES —Cont'd**Oil and gas —Cont'd**

Gasoline, fuel, illuminating and heating oil, §15-74-401.

Condemnation of gasoline by inspectors.

Removal of placards attached to gasoline pumps, §15-74-406.

Records.

Falsifying or failure to keep, §15-72-104.

Royalties.

Willful or malicious violations of provisions, §15-74-701.

Safe drinking water act.

Willful violation, §15-72-104.

Weights and measures.

Discounting crude for waste, shrinkage, etc., §15-74-203.

Quarries, §15-57-414.**Seismic operations.**

Permit violations, §15-71-114.

Surface coal mining and reclamation.

Conflicts of interest, §15-58-206.

False statement, representation or certification, §15-58-306.

Interfering with director or agent, §15-58-305.

Violating condition of permit or order, §15-58-304.

Weights and measures.

Oil and gas.

Discounting crude for waste, shrinkage, etc., §15-74-203.

FIREARMS AND OTHER WEAPONS.**Hunting.**

Negligent discharge of firearms while hunting deer, §15-43-205.

FISHING.**Auctions.**

Taking fish from fish farm unlawful.

Confiscated property to be sold at public auction, §15-43-330.

Barrel nets.

Generally, §15-43-324.

Possession and use, §15-43-324.

Beaver control fund.

Development of public hunting and fishing areas, §15-42-125.

Campfires.

Extinguishing, §15-43-107.

Dams.

Runways for fish required, §15-44-110.

Definitions, §15-43-301.

FISHING —Cont'd**Electrical devices.**

Use of device for stunning and taking fish, §15-43-316.

Misdemeanor offense, §15-43-316.

Penalty for violation of provisions, §15-43-316.

Evidence.

Prima facie evidence of fishing, §15-43-105.

Farms.

Taking fish from fish farm unlawful, §15-43-330.

Penalty, §15-43-330.

Fees.

License fees.

Resident fishing licenses, §15-42-104.

Special fees, §15-42-104.

Three-day fishing license, §15-42-110.

Use of fees collected, §15-42-124.

Use of fees collected, §15-41-111.

Nonresident fishing licenses, §15-42-107.

Three-day fishing license, §15-42-108.

Fires.

Setting fires on land of another, §15-43-107.

Funds.

Beaver control fund.

Development of public hunting and fishing areas, §15-42-125.

Guides.

Responsibilities, §15-43-239.

Hoop nets.

Generally, §15-43-324.

Possession and use, §15-43-324.

Lakes or ponds.

Taking fish from enclosed lake or pond without consent of owner.

Penalty, §15-43-329.

Warnings required, §15-43-329.

Licenses.

Armed services.

Resident on active duty entitled to free license, §15-42-123.

Application, §15-42-123.

Expiration of stamped license, §15-42-123.

Rules and regulations, §15-42-123.

Stamped license, §15-42-123.

Fees.

Nonresident fishing licenses, §15-42-107.

Free or discounted licenses.

Issuance prohibited, §15-42-105.

FISHING —Cont'd**Licenses —Cont'd**

Lifetime residents sportsman's hunting and fishing permit, §15-42-104.

Nonresident fishing licenses.

Fees, §15-42-107.

Nonresident over 65.

Reciprocity agreements, §15-42-126.

Required, §15-42-107.

Three-day fishing license, §15-42-108.

Fee, §15-42-108.

Rules and regulations, §15-42-108.

Resident fishing licenses.

Fees.

Special fees, §15-42-104.

Three-day fishing license, §15-42-110.

Use of fees collected, §15-42-124.

Required, §15-42-106.

Three-day fishing licenses.

Fee, §15-42-110.

States bordering Arkansas.

Issuance of licenses in states, §15-42-122.

Penalty for violation of provisions, §15-42-122.

Without license.

Penalty for fishing without license, §15-42-101.

Military affairs.

Licenses.

Resident on active duty entitled to free license, §15-42-123.

Nonresidents.

License, §15-42-107.

Nonresidents over 65.

Reciprocity agreements, §15-42-126.

Three-day fishing license, §15-42-108.

Penalties.

Electrical devices used for stunning and taking fish, §15-43-316.

Licenses.

Failure to have nonresident license, §15-42-107.

Issuance of licenses in states bordering Arkansas.

Violation of provisions, §15-42-122.

Without license, §15-42-101.

Obstructing stream, §15-44-110.

Taking fish from fish farm unlawful, §15-43-330.

FISHING —Cont'd**Pond nets.**

Generally, §15-43-324.

Possession and use, §15-43-324.

Ponds.

Taking fish from enclosed lake or pond.

Without consent of owner,
§15-43-329.

Warnings required, §15-43-329.

Presumptions.

Taking fish from fish farm unlawful.

Rebuttable presumption, §15-43-330.

Reciprocity.Nonresident licenses for nonresidents
over 65, §15-42-126.**Residents.**

License for fishing.

Fees.

Special fees, §15-42-104.

Three-day fishing license,
§15-42-110.

Use of fees collected, §15-42-124.

Required, §15-42-106.

Three-day fishing license,
§15-42-110.**Rules and regulations.**

Licenses.

Armed services.

Resident on active duty entitled to
free license, §15-42-123.

Nonresident fishing licenses.

Three-day fishing license,
§15-42-108.**Senior citizens.**

Nonresident fishing license.

Reciprocity agreements, §15-42-126.

Resident fishing license.

Permanent license, §15-42-104.

States.

Licenses.

Issuance of licenses in states
bordering Arkansas, §15-42-122.Penalty for violation of provisions,
§15-42-122.**Streams.**

Obstructing stream.

Penalty for obstructing stream,
§15-44-110.**Stunning and taking fish with
electrical devices, §15-43-316.**Penalty for misdemeanor of offense,
§15-43-316.**Waters and watercourses.**

Enclosed lake or pond.

Taking fish without consent of
owner, §15-43-329.

Warnings required, §15-43-329.

FISHING —Cont'd**Waters and watercourses —Cont'd**Lowering stage of water prohibited,
§15-44-111.Screening intake pipes required,
§15-44-111.

Obstructing stream.

Penalty for obstructing stream,
§15-44-110.**FORFEITURES.****Lease of oil, gas and mineral
interests.**Forfeiture of leases generally,
§§15-73-203 to 15-73-208.**Oil and gas.**

Royalties.

Lessee receiving more than share
from sale.

Forfeiture of lease, §15-74-708.

FRAUD.**Oil and gas.**

Proceeds.

Fraudulently withholding payment,
§15-74-602.**Surface coal mining and
reclamation.**

Misdemeanors, §15-58-306.

FREEDOM OF INFORMATION.**Mines and minerals.**

Claims on public lands.

Record book.

Right to examine, §15-56-205.

G**GEOLOGICAL SURVEY.****Appointment, §15-55-202.****Bonds, surety.**

State geologist, §15-55-204.

Commissioner of state lands.Access to be granted and information
to be provided to, §15-55-213.**Compensation, §15-55-202.****Composition, §15-55-202.****Creation, §15-55-201.****Deposits.**Moneys deposited into state treasury,
§15-55-212.**Duties, §15-55-208.****Established, §15-55-201.****Expenses of members, §15-55-202.****Investigations.**Expenses shared by state and United
States, §15-55-211.

Reports, §15-55-210.

Meetings, §15-55-203.

**GEOLOGICAL SURVEY —Cont'd
Notice.**

Mineral discoveries, §15-55-303.

Location and extent of state minerals.

Agencies to be notified,
§15-55-209.

Oath of office, §15-55-202.

Office.

Location, §15-55-206.

Officers, §15-55-203.

Powers, §15-55-207.

Quorum, §15-55-203.

Records, §15-55-203.

Free access to public survey records,
§15-55-302.

Rules and regulations, §15-55-203.

Seal, §15-55-206.

State geologist.

Appointment, §15-55-204.

Bond, surety, §15-55-204.

Duties, §15-55-204.

Custodian of property and
disbursing agent, §15-55-204.

Geological assistants and engineers.

Appointment, §15-55-205.

Powers, §15-55-204.

Survey, undertaking.

Commencement of work, §15-55-302.
Notice.

Mineral discoveries, §15-55-303.

Purposes, §15-55-301.

Records, free access to public records,
§15-55-302.

Reports, §15-55-301.

Terms of office, §15-55-202.

Vacancies in office.

Filling, §15-55-202.

GEOLOGY.

Geological survey, §§15-55-301,
15-55-302.

GOOD SAMARITANS.**Oil and gas.**

Transportation of compressed gases.

Accidents.

Nonliability of persons rendering
aid, §15-75-109.

Liability not precluded for gross
negligence or intentional
misconduct, §15-75-109.

GOVERNOR.**Oil and gas.**

Interstate compact to conserve oil and
gas, §§15-72-901 to 15-72-904.

GRAVEL.**Mining from streams or streambeds.**

Open-cut land.

Reclamation, §§15-57-310 to
15-57-320.

GUARDIAN AND WARD.**Oil and gas.**

Partition of oil and gas lease interests,
§15-73-405.

Partition.

Oil and gas lease interests,
§15-73-405.

H**HEARINGS.****Mines and minerals.**

Lease of mineral rights.

Life tenants.

Petitions to lease, §15-56-409.

Oil and gas.

Commission, §15-71-103.

Hearing officers, §15-71-106.

Integration of production in drilling
units, §15-72-304.

Notice, §15-72-323.

Quarry operations.

Enforcement of chapter, §15-57-413.

**Surface coal mining and
reclamation.**

Adjudicatory hearings.

Applications for review, §15-58-209.

Presiding officers, §15-58-210.

Procedures generally, §15-58-211.

Legislative hearings, §15-58-207.

Examiners, §15-58-208.

Use of acquired lands, §15-58-407.

HEIRS.**Oil and gas.**

Drilling.

Promotion, §15-72-701.

Surface owner notification,
§15-72-203.

Leasing, §15-73-309.

Ownership, §15-72-607.

Royalty payments, §15-74-604.

HIGHWAYS, ROADS AND STREETS.**Deer hunting camps.**

Establishment on highways
prohibited, §15-43-206.

Game and fish.

Deer hunting camps.

Establishment on highways
prohibited, §15-43-206.

HIGHWAYS, ROADS AND STREETS

—Cont'd

Game and fish —Cont'd

Deer hunting camps —Cont'd
 Penalty for establishment,
 §15-43-206.

Hunting.

Deer hunting camps.
 Establishment on highways
 prohibited, §15-43-206.
 Penalty for establishment,
 §15-43-206.

Penalties.

Deer hunting camps on highways,
 §15-43-206.

HUNTING.**Arkansas hunting heritage**

protection act, §§15-41-301 to
 15-41-304.

Definitions, §15-41-303.
 Legislative findings, §15-41-302.
 Recreational hunting, §15-41-304.
 Short title, §15-41-301.

Beaver control fund.

Development of public hunting and
 fishing areas, §15-42-125.

Campfires.

Extinguishing, §15-43-107.

Camping.

Deer season.
 Regulation for camping.
 Deer hunting camp on highways
 prohibited, §15-43-206.

Cold storage plants or facilities.

Storage regulations, §15-44-108.

**Consent implied to chemical test
upon shooting accident,**
§15-42-127.**Deer.**

Does.
 Local option in determining doe
 killing area, §15-43-204.
 Negligent discharge of firearms while
 hunting deer, §15-43-205.
 Season for hunting deer.
 Camping regulations.
 Deer hunting camp on highways
 prohibited, §15-43-206.

Does.

Local option to determine doe killing
 area, §15-43-204.
 Ballots, §15-43-204.
 Effect of election results, §15-43-204.
 Petition for election, §15-43-204.

Dogs.

Attempted theft or theft of licensed
 dogs, §15-42-303.

HUNTING —Cont'd**Elections.**

Doe killing area.
 Local option to determine area,
 §15-43-204.
 Ballots, §15-43-204.
 Effect of election results,
 §15-43-204.

Evidence.

Prima facie evidence of hunting,
 §15-43-105.

Fees.

Licenses.
 Resident hunting licenses.
 Use of fees collected, §15-42-124.
 Use of fees collected, §15-41-111.

Fires.

Setting fires on land of another,
 §15-43-107.

Funds.

Beaver control fund.
 Development of public hunting and
 fishing areas, §15-42-125.

Guides.

Responsibilities, §15-43-239.

Highways.

Deer hunting camps.
 Establishment on highways
 prohibited, §15-43-206.
 Penalty for establishment,
 §15-43-206.

Hunter training and safety program.

Establishment, maintenance and
 operation of program, §15-43-238.

Licenses.

Armed services.
 Resident on active duty entitled to
 free license, §15-42-123.
 Application, §15-42-123.
 Expiration of stamped license,
 §15-42-123.
 Rules and regulations, §15-42-123.
 Stamped license, §15-42-123.
 Free or discounted licenses.
 Issuance prohibited, §15-42-105.
 Lifetime residents sportsman's
 hunting and fishing permit,
 §15-42-104.

Nonresident hunting license.

Nonresidents over 65.
 Reciprocity agreements,
 §15-42-126.

Resident hunting licenses.

Fees, §15-42-104.
 Special fees, §15-42-104.
 Use of fees collected, §15-42-124.

HUNTING —Cont'd**Licenses —Cont'd**

States bordering Arkansas.

Issuance of licenses in states,
§15-42-122.

Penalty for violation of provisions,
§15-42-122.

Without license.

Penalty for hunting without license,
§15-42-101.

Military affairs.

Licenses.

Resident on active duty entitled to
free license, §15-42-123.

Nonresidents.

Licenses.

Nonresidents over 65.

Reciprocity agreements,
§15-42-126.

Penalties.

Licenses.

Issuance of licenses in states
bordering Arkansas.

Violation of provisions,
§15-42-122.

Without license, §15-42-101.

Negligent discharge of firearms while
hunting deer, §15-43-205.

Shooting accidents.

Refusal to submit to tests for drugs
and alcohol, §15-42-127.

Reciprocity.

Nonresident licenses for nonresidents
over 65, §15-42-126.

Resident hunting licenses.

Fees, §15-42-104.

Special fees, §15-42-104.

Use of fees collected, §15-42-124.

Rules and regulations.

Licenses.

Armed services.

Resident on active duty entitled to
free license, §15-42-123.

Senior citizens.

Nonresident hunting license.

Reciprocity agreements, §15-42-126.

Resident hunting license.

Permanent license, §15-42-104.

Shooting accidents.

Implied consent for chemical tests,
§15-42-127.

States.

Licenses.

Issuance of licenses in states
bordering Arkansas, §15-42-122.

Penalty for violation of provisions,
§15-42-122.

HUNTING —Cont'd**Training and safety program.**

Hunter training and safety program,
§15-43-238.

Weapons.

Negligent discharge of firearms while
hunting deer, §15-43-205.

I**IMMUNITY.****Accidents.**

Oil and gas.

Transportation of compressed gases,
§15-75-109.

Brine production.

Unit expenses, §15-76-317.

INDEXES AND INDEXING.**Mines and minerals.**

Claims on public lands.

Record books, §15-56-205.

INJUNCTIONS.**Brine production.**

Against commission, §15-76-305.

By commission, §15-76-304.

Game and fish.

Timber cut on lands belonging to game
and fish commission.

Actions for enjoyment of timber
cutting until environmental
impact statement filed,
§15-41-108.

Liquefied petroleum gas.

Actions for injunctions against
violation, §15-75-104.

Oil and gas.

Against commission, §15-72-106.

Notice, §15-72-107.

Enforcement of provisions, §15-72-108.

Unlawful disposal of salt water,
§15-76-202.

**Surface coal mining and
reclamation.**

Civil enforcement, §15-58-308.

INSPECTIONS.**Liquefied petroleum gas.**

Containers, §15-75-404.

Fees.

Schedule of inspection fees,
§15-75-105.

Right of entry, §15-75-209.

**Surface coal mining and
reclamation, §15-58-205.****INTEREST.****Game and fish.**

Game protection fund, §15-41-110.

INTEREST —Cont'd**Oil and gas.**

Proceeds.

Delinquent payment, §15-74-601.

INTERPLEADER AND INTERVENTION.**Oil and gas.**

Partition of oil and gas lease interests, §15-73-404.

INTERSTATE COMPACTS.**Oil and gas.**

Interstate compact to conserve oil and gas, §§15-72-901 to 15-72-904.

INTOXICATION.**Hunting accidents.**

Implied consent to chemical test, §15-42-127.

INVESTIGATIONS.**Explosions.**

Liquefied petroleum gas, §15-75-209.

Geological survey.

Expenses shared by state and United States, §15-55-211.

Liquefied petroleum gas.

Explosions, §15-75-209.

Oil and gas.

Commission.

Powers of commission, §15-71-110.

Secondary recovery methods, §15-72-502.

Submission of findings to landowners, §15-72-503.

INVESTMENTS.**Mines and minerals.**

Lease of mineral rights.

Life tenants.

Trustee under control of court.

Funds, §15-56-406.

J**JOINT TENANTS AND TENANTS IN COMMON.****Life tenants.**

Lease of mineral rights, §§15-56-401 to 15-56-409.

JURISDICTION.**Brine production.**

Oil and gas commission, §15-76-306.

Mines and minerals.

Lease of mineral rights.

In rem proceedings against unleased interest in minerals, §15-56-310.

JURISDICTION —Cont'd**Surface coal mining and reclamation.**

Department of environmental quality, §15-58-201.

L**LANDLORD AND TENANT.****Mines and minerals.**

Lease of mineral rights.

Life tenants, §§15-56-401 to 15-56-409.

LEASES.**Churches.**

Oil, gas and mineral interests, §15-73-202.

Eleemosynary institutions.

Oil, gas and mineral interests, §15-73-202.

Forfeitures.

Oil and gas.

Lease of oil, gas and mineral interests.

Forfeiture of leases generally, §§15-73-203 to 15-73-205.

Life estates.

Oil, gas and mineral interests, §§15-73-301 to 15-73-309.

Lodges and societies.

Oil, gas and mineral interests, §15-73-202.

Mines and minerals.

Lease of mineral rights, §§15-56-301 to 15-56-409.

Oil and gas.

Lease of oil, gas and mineral interests, §§15-73-201 to 15-73-309.

Partition of oil and gas lease interests, §§15-73-401 to 15-73-409.

Short line railroads, §15-56-502.

Oil and gas.

Lease of oil, gas and mineral interests, §§15-73-201 to 15-73-309.

Partition of oil and gas lease interests, §§15-73-401 to 15-73-409.

Royalties.

Oil, gas and mineral interests.

Life estates, §15-73-304.

LICENSES AND PERMITS.**Brine production.**

Drilling permits, §15-76-318.

Game and fish.

Wildlife habitat conservation on private lands.

Licensing agreements, §15-45-101.

LICENSES AND PERMITS —Cont'd**Seismic operations.**

Required for field seismic operations,
§15-71-114.

LIENS.**Oil and gas.**

Integration of production and drilling
units.

Operator's lien, §15-72-312.

Salt water disposal units,
§15-72-320.

Wells.

Plugging dry or abandoned wells.

Right of another to plug well,
§15-72-218.

Surface owner's liens for damages,
§15-72-213.

Wild or out of control wells.

Action by commission to control
well.

Lien on well to recover
expenses, §15-72-212.

**Surface coal mining and
reclamation, §15-58-404.****LIFE ESTATES.****Leases.**

Oil, gas and mineral interests,
§§15-73-301 to 15-73-309.

Mines and minerals.

Lease of mineral rights.

Life tenants, §§15-56-401 to
15-56-409.

Oil and gas.

Lease of oil, gas and mineral interests,
§§15-73-301 to 15-73-309.

LIGNITE DEVELOPMENT,

§§15-55-401 to 15-55-405.

**Arkansas lignite resources pilot
program, §15-55-403.****Legislative findings, §15-55-402.****Participation in other grant
programs, §15-55-404.****Reporting requirements, §15-55-405.****Short title, §15-55-401.****LIMITATION OF ACTIONS.****Mines and minerals.**

Claims on public lands.

Actions against claimants,
§15-56-204.

LIQUEFIED PETROLEUM GAS.**Additional standards by board,
§15-75-208.**

Inclusion in state code, §15-75-208.

LIQUEFIED PETROLEUM GAS**—Cont'd****Affidavits.**

Containers bearing owner's
identification.

Unlawful use of containers,
§15-75-406.

**Affirmative defenses of providers,
§15-75-112.****Attorneys at law.**

Director.

Employment of counsel, §15-75-206.

Board.

Additional standards for containers,
§15-75-208.

Inclusion in state code, §15-75-208.

Appointment, §15-75-201.

Citation of subchapter, §15-75-101.

Compensation, §15-75-201.

Composition, §15-75-201.

Definitions, §15-75-102.

Director.

Appointment, §15-75-206.

Employment, §15-75-206.

Expenses of members, §15-75-201.

Explosions.

Investigations, §15-75-209.

Inspections.

Right of entry, §15-75-209.

Investigations.

Explosions, §15-75-209.

Meetings, §15-75-202.

Oath of office, §15-75-201.

Office, §15-75-203.

Officers, §15-75-204.

Qualifications of members, §15-75-201.

Right of entry.

Inspections, §15-75-209.

Rules and regulations, §15-75-207.

Existing regulations continued in
force, §15-75-207.

Powers of board, §15-75-207.

Seal, §15-75-203.

Subpoenas, §15-75-321.

Tenure of office, §15-75-204.

Terms of office, §15-75-201.

Title of subchapter, §15-75-101.

Certification.

Certificates of competency.

Defined, §15-75-301.

Qualifications, §15-75-304.

Required, §15-75-303.

Revocation, §15-75-321.

Suspension of certificate, §15-75-321.

Training courses, §15-75-304.

Required, §15-75-305.

LIQUEFIED PETROLEUM GAS

—Cont'd

Certification —Cont'd

Handlers, §15-75-303.

Containers or cylinders.

Exception to requirement,
§15-75-303.

Installers, §15-75-303.

Recertification.

Absence from business more than
one year, §15-75-304.**Citation of law**, §15-75-101.**Containers.**

Bearing owner's identification.

Defacing or obliterating marks
unlawful, §15-75-406.

Definitions, §15-75-406.

Filling, §15-75-406.

Refilling, §15-75-406.

Sale, §15-75-406.

Use of container without consent of
owner, §15-75-406.

Vandalism.

Defacing or obliterating marks
unlawful, §15-75-406.

Butane containers.

Strength, §15-75-402.

Definitions.

Containers bearing owner's
identification.

"Owner" and "person," §15-75-406.

Filling of container of another's
company during emergency,
§15-75-406.

Inspections, §15-75-404.

Right of entry, §15-75-209.

Investigation of explosions,
§15-75-209.

Propane containers.

Strength, §15-75-403.

Reports, §15-75-110.

Right of entry.

Inspections, §15-75-209.

Strength.

Butane container, §15-75-402.

Propane containers, §15-75-403.

Use of container without owner's
consent, §15-75-406.Use of unapproved containers and
systems prohibited, §15-75-405.

Vapor pressure, §15-75-401.

Credit balances.

Account statements.

Retail sellers to furnish to
customers.Board to furnish copies of act to
dealers, §15-75-407.**LIQUEFIED PETROLEUM GAS**

—Cont'd

Credit balances —Cont'd

Account statements —Cont'd

Retail sellers to furnish to customers
—Cont'd

Failure to comply with provisions.

Revocation or suspension of
license, §15-75-407.

Statements showing balance.

Retail sellers to furnish
customers, §15-75-407.**Definitions**, §15-75-102.

Containers.

Bearing owner's identification.

"Owner" and "person," §15-75-406.

Director.

Attorneys at law.

Employment of counsel, §15-75-206.

Counsel, §15-75-206.

Detached from department of
commerce, §15-75-206.

Personnel.

Employment, §15-75-206.

Emergencies.Filling of container of another's
company during emergency,
§15-75-406.

Shortage emergencies, §15-75-322.

Employees.

Dealers.

Safety meetings for employees,
§15-75-108.**Evidence.**Containers bearing owner's
identification.Unlawful use of containers,
§15-75-406.**Examinations.**Certification of handlers and
installers, §15-75-303.**Explosions.**

Investigations, §15-75-209.

Fees.Credited towards liquefied petroleum
gas fund, §15-75-106.Deposited in state treasury,
§15-75-106.Schedule of inspection and registration
fees, §15-75-105.Suspension of inspection and
registration fees, §15-75-111.

Use, §15-75-106.

Fine.

Civil penalty, §15-75-323.

LIQUEFIED PETROLEUM GAS

—Cont'd

Fund.

- Liquefied petroleum gas fund,
§15-75-106.
- Fines, penalties, forfeitures and
money.
- Credited towards, §15-75-321.

Handlers.

- Certification, §15-75-303.
- Containers or cylinders.
- Exception to requirement,
§15-75-303.

Injunctions.

- Actions for injunctions against
violation, §15-75-104.

Inspections.

- Containers, §15-75-404.
- Fees.
- Payment, §15-75-318.
- Schedule of inspection fees,
§15-75-105.
- Right of entry, §15-75-209.

Installers.

- Certification, §15-75-303.

Investigations.

- Explosions, §15-75-209.

Liquefied petroleum gas fund,
§15-75-106.

- Credits to fund, §15-75-321.

Meetings.

- Dealers.
- Safety meetings with employees,
§15-75-108.
- Quorum, §15-75-202.

Odorization of gas, §15-75-107.**Penalties.**

- Civil penalty, §15-75-323.
- Criminal penalty, §15-75-103.
- Disposition of fines, penalties,
forfeitures and moneys,
§15-75-321.

Permits.

- Application, §15-75-305.
- Approval prerequisite to supplying or
acquiring certain equipment and
products, §15-75-317.
- Area restrictions in permits,
§15-75-320.
- Branch permits, §15-75-320.
- Class one permit, §15-75-307.
- New application upon lapse of
approval time, §15-75-324.
- Class two permit, §15-75-308.
- Class three permit, §15-75-309.
- Class four permit, §15-75-310.
- Class five permit, §15-75-311.
- Class six permit, §15-75-312.

LIQUEFIED PETROLEUM GAS

—Cont'd

Permits —Cont'd

- Class seven permit, §15-75-313.
- Class eight permit, §15-75-314.
- Class nine permit, §15-75-315.
- Class ten permit, §15-75-316.
- Defined, §15-75-301.
- Fees.
- Payment, §15-75-318.
- Issuance, §15-75-306.
- Qualifications of applicant, §15-75-305.
- Reinstatement, §15-75-319.
- Renewal, §15-75-302.
- Required, §15-75-302.
- Revocation, §15-75-321.
- Automatic revocation upon
suspension of business,
§15-75-319.
- Transfer, §15-75-319.
- Approval required, §15-75-319.

Registration.

- Schedule of registration fees,
§15-75-105.

Reports, §15-75-110.**Right of entry.**

- Inspections, §15-75-209.

Rules and regulations.

- Board, §15-75-207.
- Existing regulations continued in
force, §15-75-207.
- Powers of board, §15-75-207.

Safety meetings for employees,
§15-75-108.**Sales.**

- Area restrictions in permits,
§15-75-320.
- Branch permits, §15-75-320.
- Containers bearing owner's
identification, §15-75-406.
- Expansion of operations area,
§15-75-320.
- Restrictions, §15-75-320.
- Service personnel required,
§15-75-320.

Searches and seizures.

- Containers bearing owner's
identification.
- Unlawful use of containers.
- Search warrants, §15-75-406.

Shortage emergencies, §15-75-322.**Suspension of business.**

- Automatic revocation of permit,
§15-75-319.

Systems.

- Use of unapproved containers and
systems prohibited, §15-75-405.

Title of law, §15-75-101.

LIQUEFIED PETROLEUM GAS

—Cont'd

Training courses.

Certification requirements, §15-75-304.
Required, §15-75-305.

Use of container without consent of owner, §15-75-406.

Affidavit of unlawful use, §15-75-406.
Evidence of unlawful use, §15-75-406.
Misdemeanors.

Violation of provisions, §15-75-406.

Return to owner, §15-75-406.

Search warrants, §15-75-406.

Violation of provisions, §15-75-406.

Vandalism.

Containers bearing owner's
identification.

Defacing or obliterating marks
unlawful, §15-75-406.

Warnings.

Odorization of gas, §15-75-107.

LODGES AND SOCIETIES.**Leases.**

Oil, gas and mineral interests,
§15-73-202.

Oil and gas.

Lease of oil, gas and mineral interests,
§15-73-202.

M**MERCURY REFINERS AND
BUSINESSES.****County clerks.**

Licenses.

Applications and licenses recorded
by clerk, §15-60-109.

Cumulative nature of act, §15-60-101.**Licenses.**

Act cumulative, §15-60-101.

Applications, §15-60-104.

Contents, §15-60-104.

False statements in applications.

Forfeiture of license, §15-60-114.

Misdemeanors, §15-60-114.

Misdemeanors.

False statements in applications,
§15-60-114.

Processing fees paid to clerk and
sheriff, §15-60-110.

Recordation, §15-60-109.

Contents, §15-60-105.

County clerk.

Applications and licenses recorded
by clerk, §15-60-109.

Cumulative nature of act, §15-60-101.

**MERCURY REFINERS AND
BUSINESSES —Cont'd****Licenses —Cont'd**

Expiration dates, §15-60-108.

Fines paid into county general fund,
§15-60-115.

Forfeiture of license, §15-60-114.

False statements in applications,
§15-60-114.

Issuance, §15-60-108.

Tax payment receipts.

Exhibition before issuance of
license, §15-60-107.

Names and addresses, §15-60-105.

Necessary to engage in business,
§15-60-103.

Recordation, §15-60-109.

Required, §15-60-103.

Taxes, §15-60-106.

Amount, §15-60-106.

Paid into county general fund,
§15-60-115.

Privilege of engaging in business
granted by license tax,
§15-60-106.

Purchasing for resale, §15-60-106.

Receipt for payment.

Exhibited before issuance of
license, §15-60-107.

**Privilege of engaging in business
granted by license tax,
§15-60-106.****Records.**

Forfeiture of license, §15-60-114.

Inspections.

Records open for inspection,
§15-60-113.

Failure to preserve records or
permit inspections,
§15-60-114.

Misdemeanors.

Failure to permit inspection,
§15-60-114.

Failure to preserve records,
§15-60-114.

Ore refiners and purchasers,
§15-60-111.

Purchasers of refined mercury for
resale, §15-60-112.

Refined mercury.

Purchasers of refined mercury for
resale, §15-60-112.

Retained for three years, §15-60-113.
Failure to preserve records,
§15-60-114.

Misdemeanors, §15-60-114.

MILITARY.**Fishing.**

Licenses.

Resident on active duty entitled to free license, §15-42-123.

Hunting.

Licenses.

Resident on active duty entitled to free license, §15-42-123.

MINES AND MINERALS.**Accounts and accounting.**

Lease of mineral rights.

Discharge of receiver, §15-56-308.

Affidavits.

Claims on public lands.

Assessment work, §15-56-203.

Appeals.

Lease of mineral rights.

Validity of lessee's title, §15-56-302.

Assessments.

Claims on public lands.

Affidavit of assessment work, §15-56-203.

Bonds, surety.

Lease of mineral rights.

Life tenants.

Trustee under control of court, §15-56-406.

Claims on public lands.

Affidavits.

Assessment work, §15-56-203.

Assessment work.

Affidavits, §15-56-203.

Indexed record book required.

Failure or refusal of recorder to keep index, §15-56-205.

Limitation of actions.

Actions against claimant, §15-56-204.

Penalties.

Failure or refusal of recorder to keep index, §15-56-205.

Possessory right to claim.

Establishment, §15-56-204.

Recordation, §15-56-201.

Ex officio recorders, §15-56-201.

Fees, §15-56-202.

Indexed record book required, §15-56-205.

Misdemeanors.

Failure or refusal of recorder to keep index, §15-56-205.

Penalties.

Failure or refusal of recorder to keep index, §15-56-205.

Record books, §15-56-205.

Coal.

Short line railroads, §§15-56-501 to 15-56-505.

MINES AND MINERALS —Cont'd**Coal —Cont'd**

Surface coal mining and reclamation, §§15-58-101 to 15-58-510.

Common carriers.

Short line railroads.

Rights, powers and privileges of common carrier, §15-56-503.

Definitions.

Lease of mineral rights.

Mineral, §15-56-301.

Eminent domain.

Short line railroads, §15-56-502.

Executions.

Lease of mineral rights.

Agreement subsequent to discharge of receiver, §15-56-309.

Fees.

Claims on public lands.

Recordation, §15-56-202.

Freedom of information.

Claims on public lands.

Record book.

Right to examine, §15-56-205.

Gravel.

Mining of gravel or other materials from streams or streambeds.

Open-cut land reclamation, §§15-57-310 to 15-57-320.

Hearings.

Lease of mineral rights.

Life tenants.

Petitions to lease, §15-56-409.

Indexes.

Claims on public lands.

Record books.

Failure or refusal of recorder to keep index, §15-56-205.

Indexed record book required, §15-56-205.

Investments.

Lease of mineral rights.

Life tenants.

Trustee under control of court.

Funds, §15-56-406.

Jurisdiction.

Lease of mineral rights.

In rem proceedings against unleased interest in minerals, §15-56-310.

Landlord and tenant.

Life tenants.

Lease of mineral rights, §§15-56-401 to 15-56-409.

Lease of mineral rights.

Appeals.

Validity of lessee's title, §15-56-302.

Definitions.

Mineral, §15-56-301.

MINES AND MINERALS —Cont'd**Lease of mineral rights —Cont'd**

Executions.

Agreements subsequent to discharge
of receiver, §15-56-309.

Failure of lessee to report output,
§15-56-311.

Felonies, §15-56-311.

Investments.

Lease by life tenant.

Trustee under control of court.

Funds, §15-56-406.

Jurisdiction.

Unleased interest in minerals.

In rem proceedings against
unleased interest, §15-56-310.

Life tenants.

Applicability of provisions.

Exception from application of act,
§15-56-401.

Authorization for lease of life estate,
§15-56-402.

Confirmation of lease by court,
§15-56-407.

Determination by court, §15-56-404.

Effect of confirmation, §15-56-407.

Exception from application of act,
§15-56-401.

Hearings.

Petitions to lease, §15-56-409.

Investments.

Trustee under control of court,
§15-56-406.

Orders.

Authorizing execution of lease,
§15-56-405.

Confirming lease.

Divests title of contingent
remaindermen, §15-56-408.

Persons with life estates authorized
to lease interests, §15-56-402.

Petitions to lease, §15-56-403.

Determination by court,
§15-56-404.

Hearings on petitions, §15-56-409.

Remainders, reversions and
executory interests.

Title of contingent remaindermen.

Divested by order confirming
lease, §15-56-408.

Trustee for interests of
remaindermen, §15-56-405.

Royalties, §15-56-405.

Proportionate part vested in life
tenant, §15-56-405.

Service of process, §15-56-409.

Upon respondents, §15-56-409.

MINES AND MINERALS —Cont'd**Lease of mineral rights —Cont'd**

Life tenants —Cont'd

Trusts and trustees.

Trustee for interests of

remaindermen, §15-56-405.

Trustee under control of court,
§15-56-406.

Accounts and accounting,
§15-56-406.

Additional bond, §15-56-406.

Bonds, surety, §15-56-406.

Compensation, §15-56-406.

Investment of funds, §15-56-406.

Removal or resignation,
§15-56-406.

Reports, §15-56-406.

Successor, §15-56-406.

Orders.

Life tenants.

Order authorizing execution of
lease, §15-56-405.

Order confirming lease.

Title of contingent
remaindermen divested,
§15-56-408.

Parties.

Parties in interest, §15-56-303.

Right to appear or intervene,
§15-56-303.

Persons authorized to lease or operate,
§15-56-301.

Petitions.

Contents, §15-56-304.

Life tenants, §15-56-403.

Filing, §15-56-304.

Life tenants, §15-56-403.

Contents, §15-56-403.

Hearing on petition, §15-56-409.

Necessary parties, §15-56-304.

Parties defendant, §15-56-304.

Receivers.

Accounts and accounting.

Discharge of receiver, §15-56-308.

Appointment, §15-56-305.

Authority, §15-56-305.

Discharge of receiver, §15-56-308.

Accounts and accounting,
§15-56-308.

Execution of agreements,
§15-56-309.

Pro rata payment of proceeds,
§15-56-305.

Reports.

Binding upon approval, §15-56-306.

Failure of lessee to report output,
§15-56-311.

Felonies, §15-56-311.

MINES AND MINERALS —Cont'd**Lease of mineral rights —Cont'd****Reports —Cont'd**

Leases reported to court, §15-56-306.

Binding upon approval,
§15-56-306.

Royalties.

Life tenants, §15-56-405.

Proportionate part of royalties
vested in life tenant,
§15-56-405.

Sale of lands or mineral rights.

Leases unaffected by sale,
§15-56-307.

Summons and process, §15-56-302.

Issuance and service, §15-56-302.

Unaffected by sale of lands or mineral
rights, §15-56-307.

Validity of lessee's title.

Appeals, §15-56-302.

Who may lease or operate, §15-56-301.

Word "mineral" defined, §15-56-301.

Leases.

Lease of mineral rights, §§15-56-301 to
15-56-409.

Oil and gas.

Lease of oil, gas and mineral
interests, §§15-73-201 to
15-73-309.

Partition of oil and gas lease
interests, §§15-73-401 to
15-73-409.

Short line railroads, §15-56-502.

Life estates.

Lease of mineral rights.

Life tenants, §§15-56-401 to
15-56-409.

Limitation of actions.

Claims on public lands.

Actions against claimants,
§15-56-204.

Oil and gas.

Lease of oil, gas and mineral interests,
§§15-73-201 to 15-73-309.

Underground storage of gas generally,
§§15-72-601 to 15-72-608.

Open cut land reclamation.

Surface coal mining and reclamation
generally, §§15-58-101 to
15-58-510.

Orders.

Lease of mineral rights.

Life tenants.

Order authorizing execution of
lease, §15-56-405.

MINES AND MINERALS —Cont'd**Orders —Cont'd**

Lease of mineral rights —Cont'd

Life tenants —Cont'd

Title of contingent remaindermen
divested.

By order confirming lease,
§15-56-408.

Parties.

Lease of mineral rights.

Parties in interest, §15-56-303.

Right to appear or intervene,
§15-56-303.

Petitions.

Lease of mineral rights.

Contents, §15-56-304.

Life tenants, §15-56-403.

Filing, §15-56-304.

Life tenants, §15-56-403.

Contents, §15-56-403.

Hearing on petition, §15-56-409.

Necessary parties, §15-56-304.

Parties defendant, §15-56-304.

Quarry operation, reclamation and

safe closure act, §§15-57-401 to
15-57-414.

Railroads.

Operation of railways by owners of
mineral lands, §§15-56-501 to
15-56-505.

Short line railroads, §§15-56-501 to
15-56-505.

**Remainders, reversions and
executory interests.**

Lease of mineral rights.

Life tenants.

Title of contingent remaindermen.

Divested by order confirming
lease, §15-56-408.

Trustee for interests of
remaindermen, §15-56-405.

Reports.

Lease of mineral rights.

Failure of lessee to report output,
§15-56-311.

Felonies, §15-56-311.

Leases reported to court, §15-56-306.

Binding upon approval,
§15-56-306.

Rights of way.

Short line railroads, §15-56-502.

Royalties.

Lease of mineral rights.

Life tenants, §15-56-405.

Proportionate part of royalties
vested in life tenant,
§15-56-405.

MINES AND MINERALS —Cont'd**Sales.**

Sale of lands or mineral rights.

Leases unaffected by sale,

§15-56-307.

Short line railroads, §15-56-502.

Service of process.

Lease of mineral rights.

Life tenants.

Service upon respondents,

§15-56-409.

Short line railroads.

Authorized, §15-56-501.

Common carriers.

Rights, powers and privileges of
common carrier, §15-56-503.

Connections.

Right to connections, §15-56-504.

Crossings.

Right to crossings, §15-56-504.

Eminent domain, §15-56-502.

Equipment.

Passenger equipment, §15-56-505.

Leases.

Power to lease, §15-56-502.

Operation by persons owning mineral
interests, §15-56-501.

Passenger equipment, §15-56-505.

Powers.

Construct, lease, operate or sell
lines, §15-56-502.

Rights, powers and privileges of
common carrier, §15-56-503.

Purpose, §15-56-501.

Rights of way, §15-56-502.

Rights, powers and privileges of
common carrier, §15-56-503.

Rights to connections, crossings and
transfer, §15-56-504.

Sales.

Power to sell, §15-56-502.

Transfers.

Rights to transfers, §15-56-504.

Strip mining.

Surface coal mining and reclamation,
§§15-58-101 to 15-58-510.

Summons and process.

Lease of mineral rights, §15-56-302.

Issuance and service, §15-56-302.

**Surface coal mining and
reclamation.**

General provisions, §§15-58-101 to
15-58-510.

United States.

Claims on public lands, §§15-56-201 to
15-56-205.

**MONOPOLIES AND RESTRAINT OF
TRADE.****Brine production.**

Formation of units.

No violation of statutes, §15-76-320.

Oil and gas.

Agreements to use secondary recovery
methods.

Not in restraint of trade, §15-72-504.

Integration of production and drilling
units.

No restraint of trade, §15-72-307.

Price discrimination in purchasing
crude oil, §15-74-501.

Price discrimination.

Oil and gas.

Purchasing crude oil, §15-74-501.

MOTOR CARRIERS.**Mines and minerals.**

Short line railroads.

Rights, etc., of carriers, §15-56-503.

MOTOR VEHICLE REGISTRATION.**Oil and gas commission.**

Exemption from provisions,
§15-71-113.

MOTOR VEHICLES.**Oil and gas commission.**

Authority to acquire and maintain
automobiles, §15-71-113.

Exemption from registration
regulations, §15-71-113.

N**NATURAL RESOURCES.**

Lignite development, §§15-55-401 to
15-55-405.

NONGAME PRESERVATION.**Administration.**

Costs transferred to constitutional and
fiscal agencies fund, §15-45-306.

Committee.

Appointment, §15-45-302.

Composition, §15-45-302.

Expenditures, §15-45-303.

Costs of administration.

Transferred to constitutional and fiscal
agencies fund, §15-45-306.

Expenditures.

Generally, §15-45-303.

Funds.

Balance of funds carried forward,
§15-45-305.

Expenditures, §15-45-303.

Legislative intent, §15-45-301.

Purchase of land, §15-45-304.

NONGAME PRESERVATION —Cont'd**Use of revenues, §15-45-303.****NONRESIDENTS.****Fishing.**

Licenses.

Fees, §15-42-107.

Nonresidents over 65.

Reciprocity agreements,
§15-42-126.

Required, §15-42-107.

Three-day fishing license,
§15-42-108.**Hunting.**

Licenses.

Nonresidents over 65.

Reciprocity agreements,
§15-42-126.**NOTICE.****Abandonment.**

Oil and gas.

Notice of abandoned wells,
§15-72-216.**Geological survey.**

Mineral discoveries, §15-55-303.

Location and extent of state
minerals.Agencies to be notified,
§15-55-209.**Hunting accidents.**Right to have additional chemical test
administered, §15-42-127.**Mines and minerals.**

Claims on public lands.

Recording of mining claim notices,
§§15-56-201 to 15-56-205.**Oil and gas.**

Abandonment.

Notice of abandoned wells,
§15-72-216.

Exploration or drilling.

Notice to surface owners of
premises, §15-72-203.Gasoline, fuel, illuminating and
heating oil.Testing of untested oil or gasoline
before sale, §15-74-409.Injunctions against commission,
§15-72-107.Leaks in natural gas apparatus,
§15-72-210.

Lease of rights.

Forfeitures.

Notice to lessee to release,
§15-73-204.**NOTICE —Cont'd****Oil and gas —Cont'd**

Lease of rights —Cont'd

Notice of transfer of mineral lease,
§15-73-208.

Wells.

Intent to drill well, §15-72-205.

Wild or out of control wells,
§15-72-212.**Surface coal mining and
reclamation.**

Imminent danger or harm.

Conditions, practices and violations
not creating, §15-58-301.**NUISANCES.****Birds.**

Double-crested cormorants.

Elimination, §15-46-106.

**Surface coal mining and
reclamation.**

Adverse effects abated, §15-58-404.

O**OATHS OR AFFIRMATIONS.****Geological survey.**

Oath of office, §15-55-202.

Oil and gas.

Commission, §15-71-102.

Administration of oaths, §15-71-104.

OIL AND GAS.**Abandonment.**Plugging dry or abandoned wells,
§§15-72-217, 15-72-218.

Wells.

Abandoned and orphaned well
plugging fund, §15-71-115.Administration of program and
fund, §15-71-110.

Notice of abandonment, §15-72-216.

Plugging of dry or abandoned wells,
§15-72-216.**Accidents.**Compensation of surface owners and
tenants and restoration of land,
§15-72-219.

Transportation of compressed gases.

Liability generally, §15-75-109.

Accounts and accounting.

Lease of oil, gas and mineral interests.

Life estates.

Trustee for remaindermen,
§15-73-306.

OIL AND GAS —Cont'd**Actions.**

- Proceeds.
 - Nonpayment of proceeds, §15-74-603.
- Weights and measures.
 - Standard gas measurement law.
 - Sale or delivery of gas by volume.
 - Civil action for damages, §15-74-305.

Addresses.

- Application for drilling oil or gas wells to contain address of applicant, §15-72-109.

Affidavits.

- Gasoline, fuel, illuminating and heating oil.
 - Testing of untested oil or gasoline before sale.
 - Affidavit of making test, §15-74-409.

Agents.

- Commissioned agents of major oil companies.
- Businesses and products involving federal energy agency fuel allocation.
- Contracts requiring agents to make certain purchases or payments void, §15-74-502.
- Misdemeanors, §15-74-502.
- Regular price exception, §15-74-502.
- Separate offenses, §15-74-502.

Aiding and abetting.

- Violation of provisions, §15-72-103.

Appeals, §15-72-110.

- Court review by aggrieved person, §15-72-106.
- Proceedings under act, §15-72-110.

Applications.

- Drilling oil or gas wells.
 - Application to contain address of applicant, §15-72-109.
- Permits to drill discovery wells, §15-72-703.
- Approval of application, §15-72-704.

Attorneys at law.

- Fees.
 - Proceeds.
 - Actions for nonpayment.
 - Award of attorney's fees, §15-74-603.

Auditor of state.

- Payment of vouchers of commission, §15-71-109.

Bonds, surety.

- Director of production and conservation, §15-71-105.

OIL AND GAS —Cont'd**Bonds, surety —Cont'd**

- Lease of oil, gas and mineral interests.
 - Trustee for remaindermen, §§15-73-304, 15-73-306.

Bonus for discovery of commercial oil pool, §15-72-702.**Brine production, §§15-76-301 to 15-76-324.****Certificates of discovery.**

- Commercial pools, §15-72-705.

Churches.

- Lease of oil, gas and mineral interests, §15-73-202.

Civil procedure.

- Commission, §15-71-112.

Commission.

- Appointment, §§15-71-101, 15-71-102.
- Assessments, §15-71-107.
 - Purchaser to deduct and remit assessment to commission, §15-71-108.
 - Remission by producer, §15-71-108.
- Auditor of state.
 - Payment of commission's vouchers, §15-71-109.

Chairman, §15-71-103.

Civil procedure, §15-71-111.

Compensation, §15-71-102.

Composition, §15-71-102.

Counsel for commission, §15-71-104.

Creation, §15-71-101.

Definitions, §15-72-102.

Director of production and conservation.

- Appointment by commission, §15-71-105.

Documents.

- Summons and process.

- Production of documents, §15-71-112.

- Failure to produce documents, §15-71-112.

Employees.

- Appointment of necessary employees, §15-71-105.

Evidence.

- Witnesses.

- Procedure in case of refusal to testify, §15-71-112.

Expenses of members, §15-71-102.

Fees, §15-71-110.

- Salt water wells into which debrominated brine is injected, §15-71-110.

Hearings, §15-71-103.

- Hearing officers, §15-71-106.

Investigations, §15-71-110.

OIL AND GAS —Cont'd**Commission —Cont'd****Liens.**

Control of wild or out of control wells.

Recovery of expenses, §15-72-212.

Motor vehicles.

Authority to acquire and maintain, §15-71-113.

Exemption from registration regulations, §15-71-113.

Oaths.

Administration of oaths, §15-71-104.

Oath of office, §15-71-102.

Offices, §15-71-103.

Payment of vouchers of commission, §15-71-109.

Pools, §15-72-302.

Drilling units, §15-72-302.

Rules and regulations, §15-72-302.

Powers, §15-71-110.**Promotion of exploration for oil.**

Powers, §15-72-608.

Qualifications of members, §15-71-102.**Quorum, §15-71-103.****Rules and regulations, §15-71-110.****Adoption.**

Votes necessary, §15-71-103.

Pools, §15-72-302.

Self-incrimination.

Witnesses, §15-71-112.

Summons and process.

Documents, §15-71-112.

Failure to produce documents, §15-71-112.

Witnesses, §15-71-112.

Terms of office, §15-71-102.**Underground storage of gas.**

Authority of commission, §15-72-603.

Certificate of commission, §15-72-605.

Weights and measures.**Crude petroleum oil.**

Commission in supervisory control, §15-74-201.

Wild or out of control wells.

Action by commission to control, §15-72-212.

Recovery of expenses, §15-72-212.

Lien on well, §15-72-212.

Witnesses.

Production of documents, §15-71-112.

Refusal to testify or produce documents, §15-71-112.

Self-incrimination, §15-71-112.

Summons and process, §15-71-112.

OIL AND GAS —Cont'd**Compacts.**

Interstate compact to conserve oil and gas, §§15-72-901 to 15-72-904.

Compensation of surface owners and tenants for spills of crude oil or produced water, §15-72-219.**Compressed gases.**

Transportation, §15-75-109.

Condemnation.

Gasoline, fuel, illuminating and heating oil, §§15-74-405, 15-74-406.

Confidential treatment of reports, §15-72-805.**Conflicts of interest.**

Gasoline, fuel, illuminating and heating oil.

Manufacture or sale.

Inspectors not to be interested, §15-74-403.

Construction and interpretation.

Price discrimination in purchasing crude oil.

Cumulative effect of act, §15-74-501.

Containers.**Affidavits.**

Containers bearing owner's identification.

Unlawful use of containers, §15-75-406.

Consent.

Containers bearing owner's identification.

Use of container without consent of owner, §15-75-406.

Evidence.

Containers bearing owner's identification.

Unlawful use, §15-75-406.

Misdemeanors.

Containers bearing owner's identification.

Violation of provisions, §15-75-406.

Sales.

Containers bearing owner's identification, §15-75-406.

Searches and seizures.

Containers bearing owner's identification.

Search warrants, §15-75-406.

Vandalism.

Containers bearing owner's identification, §15-75-406.

OIL AND GAS —Cont'd**Contracts.**

Weights and measures.

Standard gas measurement law.

Sale or delivery of gas by volume,
§15-74-305.

Corporations for disposal of salt water.

Authorized, §15-76-202.

Damages.

Lease of oil, gas and mineral interests.

Forfeiture of leases.

Failure to release, §15-73-204.

Spills of crude oil or produced water,
§15-72-219.

Declaration of interest in gas by division.

Information required, §15-74-101.

Definitions, §15-72-102.

Emergency set-aside programs,
§15-72-802.

Price discrimination in purchasing
crude oil.

"Person" and "pool," §15-74-501.

Promotion of exploration for oil,
§15-72-701.

Secondary recovery, §15-72-501.

Underground storage of gas,
§15-72-602.

Weights and measures.

Standards gas measurement law.

Cubic foot of gas, §15-74-302.

Wells, §15-72-201.

Director of production and conservation.

Appointment by commission,
§15-71-105.

Bonds, surety, §15-71-105.

Powers and duties, §15-71-105.

Disposal of salt water.

Corporations for disposal of salt water,
§15-76-202.

Improper disposal, §15-76-201.

Penalties, §15-75-201.

Injunctions.

Unlawful disposal of salt water,
§15-76-201.

Penalties.

Unlawful disposal, §15-76-202.

Documents.

Commission.

Summons and process.

Production of documents,
§15-71-112.

Failure to produce documents,
§15-71-112.

Dower and curtesy.

Partition of oil and gas lease interests.

Effect of sale or lease, §15-73-408.

OIL AND GAS —Cont'd**Drilling units.**

Applicability of certain provisions,
§15-72-301.

Integrated production.

Allocation of production, §15-72-305.

Authorization, §15-72-303.

Costs sharing, §15-72-305.

Expenses.

Obligation or liability of owners,
§15-72-311.

Findings to support order requiring
unit operation, §15-72-309.

Hearings, §15-72-304.

Notice, §15-72-323.

Liens.

Operator's lien, §15-72-312.

Salt water disposal units,
§15-72-320.

Limitation on production.

Where no integration, §15-72-306.

Not in restraint of trade, §15-72-307.

Orders.

Contents, §15-72-310.

Findings to support order
requiring unit operation,
§15-72-309.

New unit operation order in pool
established by previous order,
§15-72-313.

Salt water disposal unit operation.

Contents, §15-72-318.

Enlarged operation of units
established by previous
order, §15-72-321.

Findings to support order
requiring, §15-72-317.

Petition for unit operation,
§15-72-308.

Salt water disposal units.

Expenses, §15-72-319.

Liens, §15-72-320.

Oil and gas from salt water
disposal units.

Product of tract, §15-72-322.

Orders.

Contents, §15-72-318.

Enlarged operation of units
established by previous
order, §15-72-321.

Findings to support order
requiring, §15-72-317.

Petition to establish, §15-72-316.

Unit area oil and gas.

Product of tract, §15-72-314.

Unitization of entire pool as one
operating unit, §15-72-315.

OIL AND GAS —Cont'd**Eleemosynary institutions.**

Lease of oil, gas and mining interests,
§15-73-202.

Emergency set-aside programs.

Definitions, §15-72-802.

Establishment, §15-72-804.

Generally, §15-72-804.

Penalties.

Violation of act, §15-72-803.

Policy, §15-72-801.

Purposes, §15-72-801.

Violation of chapter.

Penalties, §15-72-803.

Enhanced recovery.

Tax incentives, §15-72-1001.

Exemptions.

Increased production by use of
new technology, §15-72-1003.

Reestablishment of inactive wells
and fields, §15-72-1002.

Evidence.

Commission.

Witnesses.

Procedure in case of refusal to
testify, §15-71-112.

Partition of oil and gas lease interests.

Evidence authorizing lease,
§15-73-407.

Explosions.

Transportation of compressed gases.

Accidents.

Liability generally, §15-75-109.

Fees.

Commission, §15-71-110.

Salt water wells into which
debrominated brine is injected,
§15-71-110.

Wells producing liquid hydrocarbons,
§15-71-116.

Forfeitures.

Leases, §§15-73-203 to 15-73-205.

Royalties.

Lessee receiving more than share
from sale.

Forfeiture of lease, §15-74-708.

Fraud.

Proceeds.

Fraudulently withholding payment,
§15-74-602.

Funds.

Conservation fund, §15-71-109.

Gasoline, fuel, illuminating and
heating oil.

Constitutional and fiscal agencies
fund.

Inspection and testing fees
credited towards, §15-74-410.

OIL AND GAS —Cont'd**Gasoline, fuel, illuminating and heating oil.**

Affidavits:

Testing of untested oil or gasoline
before sale, §15-74-409.

Appropriation of fluids by inspectors
for personal use forbidden,
§15-74-403.

Commissioner of revenues to keep
records of inspections, §15-74-410.

Conflicts of interest.

Interest in manufacture or sale of oil
or gasoline.

Inspectors not to be interested,
§15-74-403.

Distillation range, §15-74-404.

Fire tests for illuminating or heating
oils, §15-74-407.

Gas or vapor exception, §15-74-407.

Funds.

Constitutional and fiscal agencies
fund.

Inspection and testing fees
credited towards, §15-74-410.

Hose inspection, §15-74-405.

Inspections.

Commissioner of revenues to keep
records, §15-74-410.

Hose inspection, §15-74-405.

Money collected credited to
constitutional and fiscal
agencies fund, §15-74-410.

Records, §15-74-408.

Commissioner of revenues to keep
records, §15-74-410.

Misdemeanors.

Violation of provisions, §15-74-401.

Notice.

Testing of untested oil or gasoline
before sale, §15-74-409.

Records, §15-74-408.

Commissioners of revenues to keep
records of inspections,
§15-74-410.

Inspection of records, §15-74-408.

Kept by dealers, §15-74-408.

Rules and regulations.

Promulgation, §15-74-402.

Specifications, §15-74-404.

Tests, §15-74-404.

Distillation range, §15-74-404.

Untested oil or gasoline tested before
sale, §15-74-409.

Affidavit of making test, §15-74-409.

Notice given commissioner of
revenues, §15-74-409.

OIL AND GAS —Cont'd**Gasoline, fuel, illuminating and heating oil —Cont'd**

Water and suspended matter.

Specifications, §15-74-404.

Good Samaritans.

Transportation of compressed gases.

Accidents.

Nonliability of persons rendering aid, §15-75-109.

Liability not precluded for gross negligence or intentional misconduct, §15-75-109.

Guardians.

Partition of oil and gas lease interests, §15-73-405.

Hearings.

Commission, §15-71-103.

Hearing officers, §15-71-106.

Integration of production in drilling units.

Notice, §15-72-323.

Illegal oil and gas.

Conservator.

Custody of illegal oil and gas, §15-72-405.

Contraband.

Finding oil and gas to be contraband, §15-72-402.

Dealing prohibited, §15-72-401.

When penalty imposed, §15-72-401.

Other causes of action, §15-72-407.

Sale.

Bringing action for seizure and sale, §15-72-402.

Sale, purchase or acquisition prohibited, §15-72-401.

Seizure and sale.

Application of proceeds, §15-72-406.

Searches and seizures.

Bringing action for seizure and sale, §15-72-402.

Order of seizure, §15-72-404.

Seizure and sale of oil and gas.

Application of proceeds, §15-72-406.

Summons.

Issuance, §15-72-403.

Transportation, refining, processing or handling prohibited, §15-72-401.

Inactive wells and fields.

Reestablishment.

Tax incentive, §15-72-1002.

OIL AND GAS —Cont'd**Indorsements.**

Lease of oil, gas and mineral interests.

Forfeiture of leases.

Failure to pay rental installment.

Indorsement of forfeiture by landowner, §15-73-205.

Injunctions.

Against commission, §15-72-106.

Notice, §15-72-107.

Enforcement of provisions, §15-72-108.

Unlawful disposal of salt water, §15-76-201.

Interest.

Proceeds.

Delinquent payment, §15-74-601.

Interpleader and intervention.

Partition of oil and gas lease interests, §15-73-404.

Interstate compact to conserve oil and gas.

Contents, §15-72-902.

Extension of compact.

By governor, §15-72-903.

Two-year extension, §15-72-901.

Generally, §15-72-902.

Governor.

Authorized to execute agreement, §15-72-901.

Extension or termination of compact, §15-72-903.

Official representative of state on commission, §15-72-904.

Interstate oil compact commission, §§15-72-902, 15-72-904.

Assistant representative, §15-72-902.

Governor.

Official representative of state, §15-72-902.

Purpose, §15-72-902.

Termination of compact by governor, §15-72-903.

Two-year extension of compact, §15-72-901.

Investigations.

Commission.

Powers of commission, §15-71-110.

Secondary recovery methods, §15-72-502.

Submission of findings to landowners, §15-72-503.

Lease of oil, gas and mineral interests.

Accounts and accounting.

Life estates.

Trustee for remaindermen, §15-73-306.

OIL AND GAS —Cont'd**Lease of oil, gas and mineral interests —Cont'd**

Cancellation of leases.

Life estates, §15-73-308.

Churches, §15-73-202.

Damages.

Forfeiture of leases.

Failure to release, §15-73-204.

Eleemosynary institutions, §15-73-202.

Expiration of leases.

Life estates, §15-73-308.

Extension of term by production in quantity in one section, §15-73-201.

Applicability of act, §15-73-201.

Exception to act, §15-73-201.

Forfeiture of leases.

Damages for failure to release, §15-73-204.

Duty of lessee to cancel or release, §15-73-203.

Failure to pay rental installment, §15-73-205.

Indorsement of forfeiture by landowner, §15-73-205.

Generally, §15-73-203.

Indorsement of forfeiture by landowner, §15-73-205.

Failure to pay rental installment, §15-73-205.

Method of showing release on record, §15-73-203.

Notice to lessee to release forfeited lease, §15-73-204.

Royalties.

Lessee receiving more than share from sale.

Forfeiture of lease, §15-74-708.

Indorsements.

Forfeiture of leases.

Failure to pay rental installment.

Indorsement of forfeiture by landowner, §15-73-205.

Life estates.

Approval of lease.

Court approval, §15-73-305.

Cancellation of lease, §15-73-308.

Confirmation of lease by court, §15-73-307.

Effect, §15-73-307.

Order of confirmation divests title of contingent remaindermen, §15-73-307.

Conveyances by reversioner or remaindermen to life tenant or lessee.

Binding in certain cases, §15-73-309.

OIL AND GAS —Cont'd**Lease of oil, gas and mineral interests —Cont'd**

Life estates —Cont'd

Court approval of lease, §15-73-305.

Determination by court, §15-73-303.

Execution of lease.

Order authorizing, §15-73-304.

Expiration of lease, §15-73-308.

Forfeiture of lease, §15-73-308.

New lease authorized, §15-73-308.

Orders.

Authorizing execution of lease, §15-73-304.

Confirmation order.

Divests title of contingent remaindermen, §15-73-307.

Persons vested with life estate, §15-73-301.

Petitions to lease, §15-73-302.

By life tenant, §15-73-302.

Content, §15-73-302.

Determination by court, §15-73-303.

Proportionate part of minerals.

Vested in life tenant in fee, §15-73-304.

Remainders, reversions and executory interests.

Conveyances by reversioner or remaindermen to life tenant or lessee.

Binding in certain cases, §15-73-309.

Lease confirmation order.

Divests title of contingent remaindermen, §15-73-307.

Royalties, §15-73-304.

Trustee for interests of remaindermen, §15-73-304.

Trustee for remaindermen, §§15-73-304, 15-73-306.

Accounts and accounting, §15-73-306.

Appointment, §15-73-304.

Bonds, surety, §15-73-304.

Additional bond, §15-73-306.

Compensation, §15-73-306.

Investment of funds, §15-73-306.

Removal or resignation, §15-73-306.

Royalties, §15-73-304.

Successor, §15-73-306.

Trusts and trustees.

Interests of remaindermen, §15-73-304.

Lodges and societies, §15-73-202.

OIL AND GAS —Cont'd**Lease of oil, gas and mineral interests —Cont'd**

Mineral lessees, prudent operator standard, §15-73-207.

New leases.

Life estates, §15-73-308.

Notice of transfer of mineral lease, §15-73-208.

Partition of oil and gas lease interests.
General provisions, §§15-73-401 to 15-73-409.

Petitions.

Life estates.

Lease by life tenant, §15-73-302.

Determination by court,
§15-73-303.

Prudent operator standard for mineral lessees, §15-73-207.

Rent.

Forfeiture of leases.

Failure to pay rental installment,
§15-73-205.

Term.

Extension of term by production in quantity in one section,
§15-73-201.

Applicability of act, §15-73-201.

Exceptions to act, §15-73-201.

Transfer of mineral lease, §15-73-208.

Weights and measures.

Leasehold interest separable.

Violation by one party, §15-74-202.

Oil removed from lease to be measured.

Cancellation of leasehold interest for violation, §15-74-202.

Lease voidable upon violation of measurement provision,
§15-74-202.

Liens.

Integration of production and drilling units.

Operator's lien, §15-72-312.

Salt water disposal units,
§15-72-320.

Wells.

Plugging dry or abandoned wells.

Right of another to plug well,
§15-72-218.

Surface owner's lien for damages,
§15-72-213.

Wild or out of control wells.

Action by commission to control well.

Lien on well to recover expenses, §15-72-212.

OIL AND GAS —Cont'd**Life estates.**

Lease of oil, gas and mineral interests,
§§15-73-301 to 15-73-309.

Limitation on production, §15-72-324.

Commission to prorate or distribute allowable production, §15-72-324.

Liquefied petroleum gas.

General provisions, §§15-75-101 to 15-75-407.

Lodges and societies.

Lease of oil, gas and mineral interests,
§15-73-202.

Monopolies and restraint of trade.

Agreements to use secondary recovery methods.

Not in restraint of trade, §15-72-504.

Integration of production in drilling units.

No restraint of trade, §15-72-307.

Price discrimination in purchasing crude oil, §15-74-501.

Motor vehicles.

Oil and gas commission.

Authority to acquire and maintain automobiles, §15-71-113.

Exemption from registration regulations, §15-71-113.

New research technology.

Tax exemption for increased production, §15-72-1003.

Notice.

Abandonment.

Notice of abandoned wells,
§15-72-216.

Exploration or drilling.

Notice to surface owners of premises, §15-72-203.

Gasoline, fuel, illuminating and heating oil.

Testing of untested oil or gasoline before sale, §15-74-409.

Injunctions against commission,
§15-72-107.

Leaks in natural gas apparatus,
§15-72-210.

Lease of oil, gas and mineral interests.

Forfeiture of leases.

Notice to lessee to release forfeited lease, §15-73-204.

Wells.

Intent to drill, §15-72-205.

Wild or out of control wells,
§15-72-212.

Oaths.

Commission, §15-71-102.

Administration of oaths, §15-71-104.

OIL AND GAS —Cont'd**Orders.**

- Division order or declaration of interest in gas.
- Information required, §15-74-101.
- Integration of production in drilling units.
- Salt water disposal unit operation.
 - Contents, §15-72-318.
 - Findings to support order requiring, §15-72-317.
- Unit operation.
 - Contents of order, §15-72-310.
 - Findings to support order requiring unit operation, §15-72-309.
- New unit operation order in pool established by previous order, §15-72-313.
- Salt water disposal unit operation.
 - Enlarged operation of unit established by previous order, §15-72-321.

Parties.

- Partition of oil and gas lease interests, §15-73-402.
- Effect of sale or lease, §15-73-408.
- Necessary parties, §15-73-408.

Partition of oil and gas lease interests.

- Allowed.
 - When no production and no outstanding lease covering entire leasehold estate, §15-73-401.
- Dower and curtesy.
 - Effect of sale or lease, §15-73-408.
- Evidence authorizing lease, §15-73-407.
- Guardians.
 - Authority, §15-73-405.
- Intervention, §15-73-404.
- Lease of oil, gas and mineral interests before sale, §15-73-406.
- Appointment of receiver, §15-73-406.
- By receiver, §15-73-406.
- Lease of oil, gas and mineral interests generally, §§15-73-201 to 15-73-309.
- Necessary parties, §15-73-408.
- Parties, §15-73-402.
- Necessary parties, §15-73-408.
- Petitions, §15-73-402.
- Procedure, §15-73-407.
- Receivers.
 - Lease before sale, §15-73-406.
 - Appointment of receiver, §15-73-406.

OIL AND GAS —Cont'd**Partition of oil and gas lease interests —Cont'd****Receivers —Cont'd**

- Lease before sale —Cont'd
 - By receiver, §15-73-406.
 - Effect, §15-73-406.

- Retrial on motion of defendant constructively summoned, §15-73-409.

- Summons and process, §15-73-403.

Trial.

- Retrial on motion of defendant constructively summoned, §15-73-409.

- When allowed, §15-73-401.

Penalties, §15-72-103.

- Discrimination in purchasing crude oil.
 - Treble damages, §15-74-501.
- Disposal of salt water.
 - Unlawful disposal, §15-76-201.
- Price discrimination in purchasing crude oil, §15-74-501.
- Weights and measures.
 - Standard gas measurement law.
 - Sale or delivery of gas by volume.
 - Violation of provisions, §15-74-305.

Wells.

- Failure to confine gas within three days, §15-72-208.

Petitions.

- Integration of production in drilling units.
 - Petition for unit operation, §15-72-308.
- Salt water disposal unit, §15-72-316.
- Lease of oil, gas and mineral interests.
 - Life estates.
 - Lease by life tenant.
 - Determination by court, §15-73-303.
- Partition of oil and gas lease interests, §15-73-402.
- Underground storage of gas, §15-72-606.

Pools.

- Defined, §§15-72-102, 15-74-501.
- Drilling units, §15-72-302.
- Rules and regulations, §15-72-302.

Price discrimination in purchasing crude oil.

- Construction and interpretation.
 - Cumulative effect of act, §15-74-501.
- Crude oil from different pools, §15-74-501.
- Cumulative effect of act, §15-74-501.

OIL AND GAS —Cont'd**Price discrimination in purchasing crude oil —Cont'd**

Definitions.

Person, §15-74-501.

Pool, §15-74-501.

Penalties, §15-74-501.

Prohibited, §15-74-501.

Treble damages, §15-74-501.

Unfair discrimination, §15-74-501.

Proceeds.

Actions.

Nonpayment of proceeds,
§15-74-603.Fraudulently withholding payment,
§15-74-602.

Interest.

Delinquent payment, §15-74-601.

Proportionate share of production.

Sale, §15-74-605.

Royalties.

Failure to pay, §15-74-604.

Time limits governing payments,
§15-74-601.

Interest.

Delinquent payments, §15-74-601.

Promotion of exploration for oil.Bonus for discovery of commercial oil,
§15-72-702.

Certificate of discovery.

Commercial pools, §15-72-705.

Commission.

Powers, §15-72-608.

Credit against severance tax,
§15-72-706.

Definitions, §15-72-701.

Permits to drill discovery well.

Applications, §15-72-703.

Approval of application,
§15-72-704.

Revenue commissioner.

Powers, §15-72-608.

Rules and regulations, §15-72-608.

Proportionate share of production.

Sale.

Proceeds, §15-74-605.

Public policy declarations,

§15-72-101.

Public utilities.Underground storage of gas generally,
§§15-72-601 to 15-72-608.**Receivers.**

Partition of oil and gas lease interests.

Lease before sale, §15-73-406.

Appointment of receiver,
§15-73-406.

By receiver, §15-73-406.

OIL AND GAS —Cont'd**Records.**Gasoline, fuel, illuminating and
heating oil.

Inspection of records, §15-74-408.

Commissioner of revenues to keep
records of inspections,
§15-74-410.

Records kept by dealers, §15-74-408.

Log of well drilled, §15-72-207.

Weights and measures.

Crude petroleum oil, §15-74-201.

Oil removed from lease, §15-74-202.

Recovery.

Enhanced recovery.

Tax incentives, §15-72-1001.

Exemption for increased
production as a result of new
technology, §15-72-1003.Reestablishment of inactive wells
and fields, §15-72-1002.**Reestablishment of inactive wells
and fields.**

Tax incentive, §15-72-1002.

Rent.

Lease of oil, gas and mineral interests.

Forfeiture of leases.

Failure to pay rental installment,
§15-73-205.**Reports.**Falsification or mutilation of reports,
§15-72-104.

Weights and measures.

Standard gas measurement law.

Gas production, §15-74-304.

**Restoration of land after spills of
crude oil or produced water,**

§15-72-219.

Revenue commissioner.

Promotion of exploration for oil.

Powers of commission, §15-72-608.

Royalties.Contracts for purchase at lesser price,
§15-74-706.Default or delinquency by lessees or
others responsible for payment,
§15-74-709.

Lease of oil, gas and mineral interests.

Life estates, §15-73-304.

Lessee receiving more than share from
sale, §15-74-708.

Forfeiture of lease, §15-74-708.

Purchaser to pay treble value,
§15-74-708.**Misdemeanors.**Willful or malicious violations of
provisions, §15-74-701.

OIL AND GAS —Cont'd**Royalties —Cont'd**

- Monthly statements furnished royalty owner, §15-74-707.
- Partial payment of production costs.
 - Payment without paying share to royalty interest unlawful, §15-74-704.
- Payment in lieu of drilling off-set wells, §15-74-702.
 - Drilling wells in adjacent units, §15-74-702.
- Premiums and bonuses.
 - Giving without paying royalty interests unlawful, §15-74-704.
 - Royalty interests entitled to, §15-74-703.
- Price of royalty gas.
 - Lesser price than paid to operator or lessee unlawful, §15-74-706.
 - Purchasers to pay same price as operator or lessee is paid, §15-74-705.
- Purchasers to pay same price for royalty gas as operator or lessee is paid for his interest, §15-74-705.
- Time for payment.
 - Monthly statements furnished royalty owner, §15-74-707.
 - Same time lessee or producer is paid, §15-74-707.
 - Waiver, §15-74-707.

Rules and regulations.

- Commission.
 - Adoption, §15-71-111.
 - Pools, §15-72-302.
 - Promulgation by commission, §15-71-110.
 - Votes necessary for adoption, §15-71-103.
- Gasoline, fuel, illuminating and heating oil.
 - Promulgation, §15-74-402.
- Pools, §15-72-302.
- Promotion of exploration of oil, §15-72-608.
- Weights and measures.
 - Crude petroleum oil, §15-74-201.

Sales.

- Illegal oil and gas.
 - Bringing action for seizure and sale, §15-72-402.
- Sale, purchase or acquisition prohibited, §15-72-401.
- Seizure and sale.
 - Application of proceeds, §15-72-406.

OIL AND GAS —Cont'd**Sales —Cont'd**

- Natural gas.
 - Sale or delivery by volume.
 - Standard gas measurement law, §15-74-305.
 - Proceeds of sale, §§15-74-601 to 15-74-605.
 - Proportionate share of production.
 - Proceeds, §15-74-605.
- Salt water.**
- Brine production, §§15-76-301 to 15-76-324.
- Searches and seizures.**
- Containers bearing owner's identification.
 - Search warrants, §15-75-406.
 - Illegal oil and gas.
 - Bringing action for seizure and sale, §15-72-402.
 - Order of seizure, §15-72-404.

Secondary recovery.

- Advisability of secondary recovery methods.
 - Submission of findings to landowners, §15-72-503.
- Agreements to use methods.
 - Not in restraint of trade, §15-72-504.
- Definitions, §15-72-501.
- Investigation of use of methods, §15-72-502.
 - Submission of findings to landowners, §15-72-503.
- Methods, §15-72-501.

Self-incrimination.

- Commission.
 - Witnesses, §15-71-112.

Severance tax.

- General provisions, §15-72-702.

Standard gas measurement law,

- §§15-74-301 to 15-74-305.

Storage of gas.

- Underground storage, §§15-72-601 to 15-72-608.

Summons and process.

- Commission.
 - Witnesses, §15-71-112.
 - Documents, §15-71-112.
 - Failure to produce documents, §15-71-112.
- Illegal oil and gas.
 - Issuance of summons, §15-72-403.
- Partition of oil and gas lease interests, §15-73-403.

Taxation.

- Severance tax.
 - General provisions, §15-72-702.

OIL AND GAS —Cont'd**Tax incentives.**

- Enhanced recovery, §15-72-1001.
- Exemption for increased production as a result of new technology, §15-72-1003.
- Reestablishment of inactive wells and fields, §15-72-1002.

Transportation of compressed gases.

- Accidents.
- Liability not precluded for gross negligence or intentional misconduct, §15-75-109.
- Nonliability of persons rendering aid, §15-75-109.
- Transporters of gas not immune from liability, §15-75-109.

Trial.

- Partition of oil and gas lease interests.
- Retrial on motion of defendant constructively summoned, §15-73-409.

Trusts and trustees.

- Lease of oil, gas and mineral interests.
- Life estates, §§15-73-304, 15-73-306.

Underground storage of gas.

- Authority of commission, §15-72-603.
- Certificate of commission, §15-72-605.
- Citation of subchapter, §15-72-601.
- Commission.
 - Authority of commission, §15-72-603.
 - Certificate of commission, §15-72-605.
- Condemnation of subsurface stratum or formation, §15-72-604.
- Definitions, §15-72-602.
- Eminent domain.
 - Condemnation of subsurface stratum or formation, §15-72-604.
- Ownership of gas, §15-72-607.
 - Deemed property of injector, §15-72-607.
- Petitions to circuit court, §15-72-606.
 - Examination and determination, §15-72-606.
- Public interest and welfare, §15-72-603.
- Short title, §15-72-601.
- Storage facilities.
 - Operations, §15-72-604.
- Subsequent proceedings, §15-72-606.

Unfair trade practices.

- Price discrimination in purchasing crude oil, §15-74-501.

Venue.

- Prosecution of violations, §15-72-103.

OIL AND GAS —Cont'd**Waiver.**

- Royalties.
- Time for payment, §15-74-707.

Waste.

- Prohibited, §15-72-105.

Weights and measures.

- Crude petroleum oil.
 - Measured-in gauge-tanks, §15-74-201.
 - Exception, §15-74-201.
 - Rules and regulations, §15-74-201.
- Lease of oil, gas and mineral interests.
 - Leasehold interest separable.
 - Violation by one party, §15-74-202.
 - Oil removed from lease to be measured.
 - Cancellation of leasehold interest for violation, §15-74-202.
 - Lease voidable upon violation of measurement provision, §15-74-202.
- Oil and gas commission.
 - Supervisory control, §15-74-201.
- Oil removed from lease.
 - Leasehold interest separable in violation by one party, §15-74-202.
 - Lease voidable upon violation of measurement provision, §15-74-202.
 - Records kept, §15-74-202.
 - Exception, §15-74-202.
 - To be measured, §15-74-202.
 - Violation of measurement provision.
 - Cancellation of leasehold interest, §15-74-202.
 - Lease voidable, §15-74-202.
- Purchases measured on one hundred percent tank-tables, §15-74-203.
 - Corrections for temperature, §15-74-203.
- Discounts for waste or shrinkage unlawful, §15-74-203.
- Misdemeanor for violations, §15-74-203.
- Records.
 - Oil measurement, §15-74-201.
 - Oil removed from lease, §15-74-202.
 - Exceptions, §15-74-202.
- Rules and regulations.
 - Crude petroleum oil, §15-74-201.
- Standard gas measurement law.
 - Actions.
 - Sale or delivery of gas by volume.
 - Civil action for damages, §15-74-305.
 - Citation of act, §15-74-301.

OIL AND GAS —Cont'd**Weights and measures —Cont'd**

Standard gas measurement law
—Cont'd

Cubic foot of gas.

Defined, §15-74-302.

Definitions.

Cubic foot of gas, §15-74-302.

Determination of specific gravity
and flowing temperature,
§15-74-303.

Flowing temperature determination,
§15-74-303.

Penalties.

Sale or delivery of gas by volume.

Violation of provisions,
§15-74-305.

Reports.

Gas production, §15-74-304.

Sale or delivery of gas by volume,
§15-74-305.

Civil action for damages,
§15-74-305.

Contract provisions, §15-74-305.

Measurement, §15-74-305.

Penalties, §15-74-305.

Short title, §15-74-301.

Specific gravity determination,
§15-74-303.

Wells.

Abandoned wells.

Abandoned and orphaned well
plugging fund, §15-71-115.

Administration of program and
fund, §15-71-110.

Notice of abandonment, §15-72-216.

Plugging dry or abandoned wells,
§§15-72-216, 15-72-217.

Penalty for violation, §15-72-202.

Right of another to plug well,
§15-72-218.

Lien on property, §15-72-218.

Casing oil or gas wells, §15-72-206.

Different oil or gas bearing sands
kept separate, §15-72-206.

Penalty for violation, §15-72-202.

Confinement of gas.

Confining gas in well until used,
§15-72-208.

Penalty for violation, §15-72-202.

Failure to confine gas, §15-72-209.

In well until used, §15-72-208.

Penalties.

Failure to confine.

Within three days, §15-72-208.

Rights of others to confine gas,
§15-72-209.

Recovery of expenses, §15-72-209.

OIL AND GAS —Cont'd**Wells —Cont'd**

Confinement of gas —Cont'd

Within three days, §15-72-208.

Penalty for violation, §15-72-208.

Definitions, §15-72-201.

Drilling of wells.

Fees, §15-72-205.

Notice of intent to drill, §15-72-205.

Surface owner of premises,
§15-72-203.

Permits.

Filing of proof of financial
responsibility, §15-72-204.

Exploration or drilling.

Notice to surface owner, §15-72-203.

Fees.

Drilling of wells, §15-72-205.

Liquid hydrocarbon, wells
producing, §15-71-116.

Flambeau lights prohibited,
§15-72-211.

Gas confined in well until used,
§15-72-208.

Penalty for violations, §15-72-202.

Leaks in natural gas apparatus.

Duty to repair, §15-72-210.

Notice, §15-72-210.

Liability of operator.

Proof of financial responsibility,
§15-72-214.

Liens.

Surface owner's liens for damages,
§15-72-213.

Liquid hydrocarbon, wells producing.
Fees, §15-71-116.

Log of well drilled, §15-72-207.

Filing, §15-72-207.

Notice.

Abandoned wells.

Notice of abandonment,
§15-72-216.

Exploration of drilling.

Notice to owner of premises,
§15-72-203.

Intent to drill, §15-72-205.

Operators.

Claims for damages, §15-72-214.

Rights subordinated, §15-72-214.

Liability, §15-72-214.

Penalties.

Casing oil or gas wells.

Violation of provisions,
§15-72-202.

Failure to confine gas.

Within three days, §15-72-208.

Gas confined in well until used.

Violations of provisions,
§15-72-202.

OIL AND GAS —Cont'd**Wells —Cont'd****Penalties —Cont'd**

Plugging dry or abandoned wells.

Violation of provisions,
§15-72-202.

Violation of certain sections,
§15-72-202.

Permits.

Drilling of wells.

Filing of proof of financial
responsibility, §15-72-204.

Plugging dry or abandoned wells,
§§15-72-216, 15-72-217.

Abandoned and orphaned well
plugging fund, §15-71-115.

Administration of program and
fund, §15-71-110.

Penalty for violations, §15-72-202.

Right of another to plug well,
§15-72-218.

Lien on property, §15-72-218.

Records.

Log of well drilled, §15-72-207.

Violation of certain sections.

Penalties, §15-72-202.

Wild or out of control wells.

Action by commission to control
well, §15-72-212.

Lien on well, §15-72-212.

Recovery of expenses, §15-72-212.

Lien on well, §15-72-212.

Failure to control wild well
unlawful, §15-72-212.

Notice to owner, §15-72-212.

OPEN-CUT LAND RECLAMATION.

Administration, §15-57-306.

Bonds.

Operator's bond, §15-57-316.

Forfeiture proceedings, §15-57-317.

Citation, §15-57-301.

Definitions, §15-57-303.

Enforcement of chapter, §15-57-305.

Exemptions from chapter, §15-57-320.

Fund, §15-57-319.

Inspections.

Entry onto lands, §15-57-309.

Operator's duties, §15-57-315.

Penalties, §15-57-305.

Permits.

Application process, §15-57-311.

Extension of permit, §15-57-314.

Permit as state property, §15-57-312.

Requirement, §15-57-310.

Withdrawal of land covered by,
§15-57-313.

Policy declaration, §15-57-302.

OPEN-CUT LAND RECLAMATION

—Cont'd

**Quarry operation, reclamation and
safe closure act,** §§15-57-401 to
15-57-414.

Registration of existing mines,
§15-57-318.

Rules and regulations, §15-57-307.

**Surface coal mining and
reclamation,** §§15-58-101 to
15-58-510.

Technical and financial assistance,
§15-57-308.

Violations of chapter, §15-57-304.

ORDERS.**Brine production.**

Formation of brine production units,
§15-76-310.

Contents of order, §15-76-311.

Mines and minerals.

Lease of mineral rights.

Life tenants.

Order authorizing execution of
lease, §15-56-405.

Title of contingent remaindermen
divested.

By order confirming lease,
§15-56-408.

Oil and gas.

Division order or declaration of
interest in gas.

Information required, §15-74-101.

Integration of production in drilling
units.

Salt water disposal unit operation.

Contents, §15-72-318.

Findings to support order
requiring, §15-72-317.

Unit operation.

Contents, §15-72-310.

Findings to support order,
§15-72-309.

New unit operation order in pool
established by previous order,
§15-72-313.

Salt water disposal unit operation.

Enlarged operation of unit
established by previous
order, §15-72-321.

**Surface coal mining and
reclamation.**

Civil enforcement.

Restraining orders, §15-58-308.

Imminent danger or harm.

Conditions, practices and violations
creating.

Cessation orders, §15-58-302.

ORDERS —Cont'd**Surface coal mining and reclamation —Cont'd**

- Imminent danger or harm —Cont'd
 - Conditions, practices and violations not creating.
 - Cessation order, §15-58-301.
- Pattern violations.
 - Revocation or suspension of permit.
 - Order to show cause, §15-58-303.

P**PARKS AND RECREATION.****Wildlife recreation facilities pilot program, §§15-47-101 to 15-47-105.****PARTIES.****Mines and minerals.**

- Lease of mineral rights.
- Parties in interest, §15-56-303.
- Right to appear or intervene, §15-56-303.

Oil and gas.

- Partition of oil and gas lease interests, §15-73-402.
- Effect of sale or lease, §15-73-408.
- Necessary parties, §15-73-408.

PARTITION.**Guardians.**

- Oil and gas lease interests, §15-73-405.

Oil and gas.

- Partition of oil and gas lease interests, §§15-73-401 to 15-73-409.

PETITIONS.**Brine production.**

- Formation of brine production units, §15-76-309.

Oil and gas.

- Integration of production in drilling units.
- Petition for unit operation, §15-72-308.
- Salt water disposal unit, §15-72-316.
- Lease of oil, gas and mineral interests.
- Life estates.
 - Lease by life tenant.
 - Determination by court, §15-73-303.
- Partition of oil and gas lease interests, §15-73-402.
- Underground storage of gas, §15-72-606.

PETROLEUM PRODUCTS TANKS.**Liquefied petroleum gas.**

- General provisions, §§15-75-101 to 15-75-407.

POLLUTION.**Department of environmental quality.**

- Brine production.
- Jurisdiction of department not affected, §15-76-324.

PRESUMPTIONS.**Fishing.**

- Taking fish from fish farm unlawful.
- Rebuttable presumption, §15-43-330.

PRIORITIES.**Surface coal mining and reclamation.**

- State abandoned mine reclamation program priorities, §15-58-403.

PUBLIC FUNDS.**Abandoned and orphaned well plugging fund, §15-71-115.****Fishing.**

- Beaver control fund.
- Development of public hunting and fishing areas, §15-42-125.

Game protection fund.

- Fines to fund, §15-41-209.
- Interest, §15-41-110.

Hunting.

- Bearer control fund, §15-42-125.

Land reclamation fund, §15-57-319.**Liquefied petroleum gas.**

- Liquefied petroleum gas fund, §15-75-106.
- Fines, penalties, forfeitures and moneys.
- Credited towards, §15-75-321.

Surface coal mining operation fund, §15-58-508.**PUBLIC UTILITIES.****Oil and gas.**

- Underground storage of gas generally, §§15-72-601 to 15-72-608.

Surface coal mining and reclamation.

- Compliance with provisions, §15-58-105.

Q**QUARRIES, §§15-57-401 to 15-57-414.****Bonds, surety.**

- Submission by operator, §15-57-412.

Definitions, §15-57-402.**Distribution of fees and fines, §15-57-414.****Enforcement hearings, §15-57-413.****Notification of exhausted quarry, §15-57-408.**

QUARRIES —Cont'd**Notification of intent to quarry.**

Contents, §15-57-404.

Filing, §15-57-403.

Refiling, §15-57-407.

Notification of reactivated quarry.

Contents, §15-57-406.

Filing, §15-57-403.

Notification of temporarily closed quarry.

Contents, §15-57-405.

Refiling, §15-57-407.

Reclamation of land at exhausted site, §15-57-409.**Response to notifications, §15-57-403.****Safety measures, §15-57-410.****Title of act, §15-57-401.****Violations of subchapter, §15-57-411.****QUICKSILVER.****Mercury refiners and businesses,
§§15-60-101 to 15-60-115.****R****RAILROADS.****Coal.**

Short line railroads, §§15-56-501 to 15-56-505.

Mines and minerals.

Short line railroads, §§15-56-501 to 15-56-505.

Short line railroads.

Mines and minerals, §§15-56-501 to 15-56-505.

REAL PROPERTY.**Surface coal mining and reclamation.**

Designating land as unsuitable for surface coal mining, §15-58-501.

Lands eligible under state abandoned land reclamation programs, §15-58-401.

Use of acquired lands, §15-58-407.

Public hearing, §15-58-407.

RECEIVERS.**Oil and gas.**

Partition of oil and gas lease interests.

Lease before sale, §15-73-406.

Appointment of receiver,
§15-73-406.

By receiver, §15-73-406.

RECIPROCITY.**Fishing.**

Nonresident licenses for nonresidents over 65, §15-42-126.

Hunting.

Nonresident licenses for nonresidents over 65, §15-42-126.

RECLAMATION.**Coal.**

Surface coal mining and reclamation, §§15-58-101 to 15-58-510.

Mines and minerals.

Surface coal mining and reclamation, §§15-58-101 to 15-58-510.

Quarries.

Operation, reclamation and safe closure act, §§15-57-401 to 15-57-414.

Surface coal mining and reclamation, §§15-58-101 to 15-58-510.**RECORDATION OF DOCUMENTS.****Claims on public lands.**

Mines and minerals, §§15-56-201 to 15-56-205.

Mines and minerals.

Claims on public lands, §§15-56-201 to 15-56-205.

RECORDS.**Geological survey.**

Free access to public records, §15-55-302.

Oil and gas.

Gasoline, fuel, illuminating and heating oil.

Inspection of records, §15-74-408.

Commissioner of revenues to keep records of inspections, §15-74-410.

Records kept by dealers, §15-74-408.

Log of well drilled, §15-72-207.

Weights and measures.

Crude petroleum oil, §15-74-201.

Oil removed from lease, §15-74-202.

Water supply and waterworks.

Willful violation of safe drinking water act, §15-72-104.

REFINERIES.**Mercury refiners and businesses,
§§15-60-101 to 15-60-115.****REGISTRATION.****Liquefied petroleum gas.**

Schedule of registration fees, §15-75-105.

REMAINDERS, REVERSIONS AND EXECUTORY INTERESTS.**Mines and minerals.**

Lease of mineral rights.

Life tenants.

Title of contingent remaindermen.

Divested by order confirming lease, §15-56-408.

Trustee for interests of remaindermen, §15-56-405.

Oil and gas.

Lease of oil, gas and mineral interests.

Conveyances by reversioner or remaindermen to life tenant or lessee.

Binding in certain cases, §15-73-309.

Life estates.

Confirmation order.

Divests title of contingent remaindermen, §15-73-307.

Trustee for remaindermen, §§15-73-304, 15-73-306.

Accounts and accounting, §15-73-306.

Additional bond, §15-73-306.

Bonds, surety, §§15-73-304, 15-73-306.

Compensation, §15-73-306.

Investment of funds, §15-73-306.

Removal or resignation, §15-73-306.

Royalties, §15-73-304.

Successor, §15-73-306.

Trusts and trustees.

Lease of oil, gas and mineral interests.

Life estates, §§15-73-304, 15-73-306.

RENT.**Oil and gas.**

Lease of oil, gas and mineral interests.

Forfeiture of leases.

Failure to pay rental installment, §15-73-205.

REPORTS.**Game and fish.**

Fines, §15-41-209.

Geological survey, §15-55-301.**Liquefied petroleum gas, §15-75-110.****Mines and minerals.**

Lease of mineral rights.

Failure of lessee to report output, §15-56-311.

Felonies, §15-56-311.

Leases reported to court, §15-56-306.

Binding upon approval, §15-56-306.

REPORTS —Cont'd**Oil and gas.**

Falsification or mutilation of reports, §15-72-104.

Misdemeanors, §15-72-104.

Weights and measures.

Standard gas measurement law.

Gas production, §15-74-304.

Wildlife recreation facilities pilot program, §15-47-105.**RESEARCH.****Game and fish.**

Refuges.

Collection for scientific study, §15-45-210.

REWARDS.**Game and fish commission, §15-41-115.****RIGHT OF ENTRY.****Liquefied petroleum gas.**

Inspections, §15-75-209.

Surface coal mining and reclamation, §15-58-405.**RIGHTS OF WAY.****Mines and minerals.**

Short line railroads, §15-56-502.

ROYALTIES.**Brine production, §15-76-314.****Leases.**

Oil, gas and mineral interests.

Life estates, §15-73-304.

Mines and minerals.

Lease of mineral rights.

Life tenants.

Generally, §15-56-405.

Proportionate part of royalties vested in life tenant, §15-56-405.

S**SALES.****Liquefied petroleum gas.**

Area restrictions in permits, §15-75-320.

Branch permits, §15-75-320.

Containers bearing owner's identification, §15-75-406.

Expansion of operations area, §15-75-320.

Restrictions, §15-75-320.

Service personnel required, §15-75-320.

SALES —Cont'd**Mines and minerals.**

- Sale of lands or mineral rights.
 - Leases unaffected by sale,
§15-56-307.

- Short line railroads, §15-56-502.

Oil and gas.

- Illegal oil and gas.
 - Bringing action for seizure and sale,
§15-72-402.
- Sale, purchase or acquisition
prohibited, §15-72-401.
- Seizure and sale.
 - Application of proceeds,
§15-72-406.

- Natural gas.

- Volume sales or deliveries.
 - Standard gas measurement law,
§15-74-305.

- Proceeds of sale, §§15-74-601 to
15-74-605.

- Proportionate share of production.
 - Proceeds of sale, §15-74-605.

SALT WATER.

- Brine production**, §§15-76-301 to
15-76-324.

Oil and gas.

- Disposal of salt water, §§15-76-201,
15-76-202.

**SEALS AND SEALED
INSTRUMENTS.**

- Geological survey**, §15-55-206.

SEARCHES AND SEIZURES.**Game and fish.**

- Authorized searches, §15-41-203.
- Game wardens.
 - Authorized searches, §15-41-203.

Liquefied petroleum gas.

- Containers bearing owner's
identification.
 - Unlawful use of containers.
 - Search warrants, §15-75-406.

Oil and gas.

- Containers bearing owner's
identification.
 - Search warrants, §15-75-406.
- Illegal oil and gas.
 - Bringing action for seizure and sale,
§15-72-402.
 - Order of seizure, §15-72-404.

SEARCH WARRANTS.**Liquefied petroleum gas.**

- Containers bearing owner's
identification.
 - Unlawful use of containers,
§15-75-406.

SEISMIC OPERATIONS.**Permits.**

- Required for field seismic operations,
§15-71-114.

SELF-INCRIMINATION.**Oil and gas.**

- Commission.
 - Witnesses, §15-71-112.

SENIOR CITIZENS.**Fishing licenses.**

- Nonresident fishing license.
 - Reciprocity agreements, §15-42-126.
- Resident fishing license.
 - Permanent license, §15-42-104.

Hunting.

- Resident hunting license.
 - Permanent license, §15-42-104.

Hunting licenses.

- Nonresident hunting license.
 - Reciprocity agreements, §15-42-126.
- Resident hunting license.
 - Permanent license, §15-42-104.

**SERVICE OF NOTICE, PROCESS
AND OTHER PAPERS.****Mines and minerals.**

- Lease of mineral rights.
 - Life tenants.
 - Service upon respondents,
§15-56-409.

Witnesses.

- Oil and gas commission, §15-71-112.

SEVERANCE TAX.**Credits.**

- Oil and gas.
 - Promotion of exploration of oil.
 - Credit against severance tax,
§15-72-706.

Oil and gas.

- Promotion of explorations for oil.
 - Credit against tax, §15-72-706.

SHORT LINE RAILROADS.

- Mines and minerals**, §§15-56-501 to
15-56-505.

**STATE DEPARTMENTS AND
AGENCIES.****Surface coal mining and
reclamation.**

- Compliance with provisions,
§15-58-105.

STATE LANDS.**Game and fish.**

- Transfer of state-owned land,
§15-41-109.

STATE OF ARKANSAS.**Game and fish.**

- Property of state, §15-43-104.

STATES.**Fishing.**

Licenses.

- Issuance of licenses in states bordering Arkansas, §15-42-122.
- Penalty for violation of provisions, §15-42-122.

Hunting.

Licenses.

- Issuance of licenses in states bordering Arkansas, §15-42-122.
- Penalty for violation of provisions, §15-42-122.

STATUTE OF LIMITATIONS.**Mines and minerals.**

- Claims on public lands.
- Actions against claimants, §15-56-204.

STORAGE.**Oil and gas.**

- Underground gas storage, §§15-72-601 to 15-72-608.

STRIP MINING.

Surface coal mining and reclamation, §§15-58-101 to 15-58-510.

SUBPOENAS.**Brine production.**

- Power of commission, §15-76-323.

Liquefied petroleum gas.

- Board, §15-75-321.

SUBSTANCE ABUSE.**Hunting accidents.**

- Implied consent to chemical test, §15-42-127.

SUMMONS.**Mines and minerals.**

- Lease of mineral rights, §15-56-302.
- Issuance and service, §15-56-302.

Oil and gas.

Commission.

- Production of documents, §15-71-112.
- Failure to produce documents, §15-71-112.
- Witnesses, §15-71-112.

Illegal oil and gas.

- Issuance of summons, §15-72-403.
- Partition of oil and gas lease interests, §15-73-403.

SURFACE MINING AND RECLAMATION.

Abatement of adverse effects, §15-58-404.

SURFACE MINING AND RECLAMATION —Cont'd
Actions.

- Citizens' actions, §15-58-309.

Appeals.

- Administrative review.
- Costs, §15-58-213.
- Judicial review, §15-58-212.
- Costs, §15-58-213.

Bonds, surety, §15-58-509.**Citation of act, §15-58-101.****Conflicts of interest.**

- Penalties, §15-58-206.
- Persons performing function or duty under act.
- Financial interest in surface coal mining prohibited, §15-58-206.

Corporations.

- Compliance with provisions, §15-58-105.

Costs.

- Administrative and judicial review, §15-58-213.
- State abandoned mine reclamation program projects, §15-58-403.

Declaration of policy, §15-58-103.**Definitions, §15-58-104.**

Environmental protection performance standards.

- Required to be met, §15-58-510.

Environmental quality department.

- Defined, §15-58-104.

Director.

- Powers and duties, §15-58-203.
- Jurisdiction, §15-58-201.
- Powers and duties, §§15-58-201, 15-58-202.

Exempt activities, §15-58-106.**Exploration operations, §15-58-504.****False pretenses and cheats.**

- Misdemeanors, §15-58-306.

Findings of legislature, §15-58-102.**Hearings.**

- Adjudicatory hearings.
- Applications for review, §15-58-209.
- Presiding officers, §15-58-210.
- Procedures generally, §15-58-211.
- Legislative hearings, §15-58-207.
- Examiners, §15-58-208.
- Use of acquired lands, §15-58-407.

Imminent danger or harm.

- Conditions, practices and violations creating, §15-58-302.
- Cessation order, §15-58-302.
- Conditions, practices and violations not creating, §15-58-301.
- Cessation orders, §15-58-301.
- Notice of violations, §15-58-301.

SURFACE MINING AND RECLAMATION —Cont'd

Injunctions.

Civil enforcement, §15-58-308.

Inspections, §15-58-205.

Interfering with director or agent, §15-58-305.

Judicial review, §15-58-212.

Jurisdiction.

Department of environmental quality, §15-58-201.

Legislative declaration of policy, §15-58-103.

Legislative findings, §15-58-102.

Liens, §15-58-404.

Misrepresentation, §15-58-306.

Notice.

Imminent danger or harm.

Conditions, practices and violations not creating, §15-58-301.

Open-cut land reclamation,

§§15-57-310 to 15-57-320.

Duties of operator, §15-57-315.

Exemptions, §15-57-320.

Permits, §15-57-310.

Orders.

Civil enforcement.

Restraining orders, §15-58-308.

Imminent danger or harm.

Conditions, practices and violations creating.

Cessation order, §15-58-302.

Conditions, practices and violations not creating.

Cessation order, §15-58-301.

Pattern violations.

Revocation or suspension of permit.

Order to show cause, §15-58-303.

Penalties.

Civil penalties, §15-58-307.

Conflicts of interest, §15-58-206.

Permits.

Application, §15-58-502.

Environmental protection performance standards.

Satisfaction prerequisite to issuance of permit, §15-58-510.

Fees, §15-58-508.

Misdemeanors.

Violating condition of permit or order, §15-58-304.

Objections.

Filing, §15-58-505.

Open-cut land reclamation,

§§15-57-310 to 15-57-320.

Renewal, §15-58-506.

Required, §15-58-502.

SURFACE MINING AND RECLAMATION —Cont'd

Permits —Cont'd

Suspension or revocation.

Pattern of violations.

Order to show cause, §15-58-303.

Termination, §15-58-507.

Policy declaration, §15-58-103.

Pollution control and ecology commission.

Defined, §15-58-104.

Powers and duties, §15-58-202.

Priorities.

State abandoned mine reclamation program priorities, §15-58-402.

Public utilities.

Compliance with provisions, §15-58-105.

Quarry operation, reclamation and safe closure act, §§15-57-401 to 15-57-414.

Real property.

Designating land as unsuitable for surface coal mining, §15-58-501.

Lands eligible under state abandoned land reclamation programs, §15-58-401.

Use of acquired lands, §15-58-407.

Public hearing, §15-58-407.

Right of entry, §15-58-405.

Rules and regulations.

Adoption, §15-58-204.

Promulgation, §15-58-201.

Requirement, §15-58-503.

Short title, §15-58-101.

State abandoned mine reclamation program.

Costs of projects, §15-58-403.

Defined, §15-58-104.

Lands eligible, §15-58-401.

Priorities, §15-58-402.

State departments and agencies.

Compliance with provisions, §15-58-105.

Unsuitable land.

Designation, §15-58-501.

Violating condition of permit or order, §15-58-304.

Voluntary reclamation of land.

Exemption, §15-57-202.

Investigation, §15-57-203.

Notice of proposed reclamation, §15-57-203.

Reclamation not to subject land to reclamation laws, §15-57-201.

Waters and watercourses.

Water rights and replacement, §15-58-107.

SURFACE MINING AND**RECLAMATION —Cont'd****Waters and watercourses —Cont'd**

Waters eligible under state abandoned mine reclamation program,
§15-58-401.

T**TRIAL.****Oil and gas.**

Partition of oil and gas lease interests.

Retrial on motion of defendant
constructively summoned,
§15-73-409.

TRUSTS AND TRUSTEES.**Bonds, surety.**

Lease of oil, gas and mineral interests.

Life estates.

Trustee for remaindermen,
§§15-73-304, 15-73-306.

Oil and gas.

Lease of oil, gas and mineral interests.

Life estates, §§15-73-304, 15-73-306.

**Remainders, reversions and
executory interests.**

Lease of oil, gas and mineral interests.

Life estates, §§15-73-304, 15-73-306.

U**UNFAIR AND DECEPTIVE TRADE
PRACTICES.****Oil and gas.**

Price discrimination in purchasing
crude oil, §15-74-501.

UNITED STATES.**Claims.**

Mines and minerals.

Claims on public lands, §§15-56-201
to 15-56-205.

Mines and minerals.

Claims on public lands, §§15-56-201 to
15-56-205.

URINALYSIS.**Hunting accidents.**

Implied consent to breath analysis,
§15-42-127.

V**VANDALISM.****Liquefied petroleum gas.**

Containers bearing owner's
identification.

Defacing or obliterating marks
unlawful, §15-75-406.

VENUE.**Oil and gas.**

Prosecution of violations, §15-72-103.

W**WAIVER.****Oil and gas.**

Royalties.

Time for payment, §15-74-707.

WARDENS.**Game wardens.**

Authorized searches, §15-41-203.

WARNING ORDERS.**Constructive service.**

Oil and gas.

Illegal oil and gas.

Notice of proceedings,

§§15-72-403, 15-72-404.

Partition, §15-73-403.

WASTE.**Oil and gas.**

Prohibited, §15-72-105.

WATERCOURSES.**Fishing.**

Enclosed lake or pond.

Taking fish without consent of
owner, §15-43-329.

Warnings required, §15-43-329.

Lowering stage of water prohibited,
§15-44-111.

Screening intake pipes required,
§15-44-111.

Obstructing stream.

Penalty for obstructing stream,
§15-44-110.

**Surface coal mining and
reclamation.**

Water rights and replacement,
§15-58-107.

Waters eligible under state abandoned
mine reclamation program,
§15-58-401.

**WATER SUPPLY AND
WATERWORKS.****Oil and gas.**

Willful violation of safe drinking water
act.

Misdemeanors, §15-72-104.

Records.

Willful violation of safe drinking water
act, §15-72-104.

WEIGHTS AND MEASURES.**Oil and gas.**

General provisions, §§15-74-201 to
15-74-305.

WEIGHTS AND MEASURES —Cont'd**Oil and gas —Cont'd**

Standard gas measurement law,
§§15-74-301 to 15-74-305.

WELLS.**Brine production.**

Abandoned wells, §15-76-319.
Drilling permits, §15-76-318.
Fees, §15-76-318.

WILDLIFE.**Cold storage plants or facilities.**

Storage regulations, §15-44-108.

Conservation.

Wildlife habitat conservation on
private lands.
Licensing agreements, §15-45-101.

Crops.

Wildlife causing crop damage,
§15-44-114.

Game and fish commission.

Director.
Reimbursement of expenses,
§15-41-102.
Special allowance, §15-41-102.
Dogs running at large.
Penalty for enforcement of
regulation, §15-41-113.
Employees.
Uniformed employees.
Allowance for uniform, §15-41-114.
Environmental impact statement.
Required before cutting timber on
lands belonging to commission,
§15-41-108.
Actions for enjoyment of timber
cutting until statement filed,
§15-41-108.
Expenses of director.
Reimbursement to director,
§15-41-102.
Federal aid.
Hunter training and safety program.
Funds for program, §15-43-238.
Fishing licenses.
Use of fees collected, §15-41-111.
Funds.
Game protection fund, §15-41-110.
Game wardens.
Authorized searches, §15-41-203.
Hunter training and safety program,
§15-43-238.
Hunting licenses.
Use of fee collected, §15-41-111.
Migratory waterfowl.
Commission to emphasize programs
for, §15-41-105.
Rewards, §15-41-115.

WILDLIFE —Cont'd**Game and fish commission —Cont'd**

Rules and regulations.
Hunter training and safety program.
Adoption and enforcement,
§15-43-238.

State lands.

Transfer of state-owned land,
§15-41-109.

Timber cut on lands belonging to
commission.

Environmental impact statements
required, §15-41-108.

Transfer of state-owned land,
§15-41-109.

Uniformed employees.

Allowance for uniforms, §15-41-114.

Wild fowl sanctuary.

Authority of game and fish
commission, §15-45-210.

Wildlife habitat conservation on
private lands.

Licensing agreements, §15-45-101.

Game protection fund.

Fines to fund, §15-41-209.
Interest, §15-41-110.

Habitat.

Wildlife habitat conservation on
private lands.
Licensing agreements, §15-45-101.

Highways.

Deer hunting camps.
Establishment on highways
prohibited, §15-43-206.
Penalty for establishment,
§15-43-206.

Licenses.

Wildlife habitat on private lands.
Licensing agreements, §15-45-101.

Migratory waterfowl.

Programs for, §15-41-105.

Nongame preservation, §§15-45-301 to 15-45-306.**Recreation facilities pilot program,**

§§15-47-101 to 15-47-105.
Creation, §15-47-103.
Funding, §15-47-104.
Legislative findings, §15-47-102.
Purpose, §15-47-103.
Reporting of status, §15-47-105.
Title of provisions, §15-47-101.

Refuges.

Bird sanctuaries.
State parks as bird sanctuaries,
§15-45-211.
Collection for scientific study,
§15-45-210.

WILDLIFE —Cont'd**Refuges —Cont'd**

County appraisal board.

Damages to crops, §15-45-209.

Duty to determine damage done by wildlife, §15-45-209.

Damages to crops, §15-45-209.

Molesting birds in state park unlawful, §15-45-211.

Scientific study.

Collection for scientific study, §15-45-210.

Shooting or molesting birds in state park unlawful, §15-45-211.

State game refuges.

Shooting or molesting birds in state park unlawful, §15-45-211.

Wild fowl sanctuary, §15-45-210.

Reports.

Game and fish fines, §15-41-209.

WILDLIFE —Cont'd**Rules and regulations.**

Hunter training and safety program.

Authority to adopt and enforce, §15-43-238.

Rewards for information leading to the arrest of violators, §15-41-115.

Searches and seizures.

Authorized searches, §15-41-203.

State lands.

Transfer of state-owned land, §15-41-109.

State of Arkansas.

Property of state, §15-43-104.

Wildlife habitat conservation on private lands.

Licensing agreements, §15-45-101.

WITNESSES.**Summons and process.**

Oil and gas commission, §15-71-112.

Index to Title 15

A

ABANDONED PROPERTY.

Brine production.

Abandoned wells, §15-76-319.

Oil and gas.

Plugging dry or abandoned wells,
§§15-72-216 to 15-72-218.

ACCIDENTS.

Oil and gas.

Transportation of compressed gases.
Liability generally, §15-75-109.

ACTIONS.

Amendment 82 bonds.

Right of action.
Priority of legal actions,
§15-4-3220.
When action may be brought,
§15-4-3218.

Bond issues.

Economic development superprojects
bonds.
Preferred cause.
Actions involving validity of
subchapter or bonds issued,
§15-4-3022.

Conservation easements.

Judicial action, §15-20-409.

Economic development superprojects.

Bonds to fund.
Preferred cause.
Actions involving validity of
subchapter or bonds issued,
§15-4-3022.

Oil and gas.

Nonpayment of proceeds, §15-74-603.
Spills of crude oil or produced water.
Surface owners or tenants, right of
action for remediation or
restoration, §15-72-219.
Standard gas measurement law.
Sale or delivery of gas by volume,
action for damages,
§15-74-305.

Poultry feeding operations.

Registration with natural resources
commission.
Collection of penalties, §15-20-905.

ACTIONS —Cont'd

Purchases.

Trees and timber.
Based upon volume or weight.
Payment of less than correct
amount.
Action to recover correct
amount, §15-32-413.

Soil nutrient application and poultry litter utilization.

Collection of penalties imposed,
§15-20-1113.

Soil nutrient management planners and applicators certification.

Collection of administrative penalties,
§15-20-1008.

Surface coal mining and reclamation.

Citizens actions, §15-58-309.

Trees and timber.

County timber inspectors.
Actions on bonds, §15-32-204.
Purchases based upon volume or
weight.
Payments of less than correct
amount.
Actions to recover correct amount,
§15-32-413.

Wages for piece work.

Recovery of wages owed, §15-32-413.

Water pollution abatement facilities bonds.

Cases involving bonds.
Preferred cause, §15-20-1322.

Water resources development.

Challenging validity of act.
Expediting actions challenging,
§15-22-622.

ADULT EDUCATION.

Workforce investment board and adult education study

committee, §§15-4-2901, 15-4-2902.

ADVANCED COMMUNICATIONS AND INFORMATION TECHNOLOGY.

Information age communities commission, §§15-9-101 to 15-9-105.

ADVERTISING.

Digital product and motion picture industry development,
§§15-4-2001 to 15-4-2011.

AFFIDAVITS.**Liquefied petroleum gas.**

Containers bearing owner's identification.
Unlawful use of containers,
§15-75-406.

Mines and minerals.

Claims on public lands.
Assessment work, §15-56-203.

Oil and gas.

Gasoline, fuel, illuminating and heating oil.
Testing of untested oil or gasoline before sale.
Affidavit of making test,
§15-74-409.

AFFORDABLE HOUSING.

Development finance authority,
§15-5-102.

Small businesses, §15-4-402.

AFFORDABLE NEIGHBORHOOD HOUSING TAX CREDITS,

§§15-5-1301 to 15-5-1305.

Authorization of tax credits,
§15-5-1304.

Definitions, §15-5-1302.

Procedures, §15-5-1303.

Rules and regulations, §15-5-1305.

Title, §15-5-1301.

AGENTS.**Oil and gas, commissioned agents of major oil companies.**

Businesses and products involving federal energy agency fuel allocation.
Contracts requiring agents to make certain purchases or payments void, §15-74-502.
Misdemeanors, §15-74-502.
Regular price exception,
§15-74-502.
Separate offenses, §15-74-502.

Soil conservation and domestic allotment.

State university designated as state's agent, §15-21-402.

AGRICULTURE.**Development finance authority.**

Catfish industry development program, §15-5-805.
Rural development generally,
§15-5-801.

AIDING AND ABETTING.

Oil and gas, §15-72-103.

ALCOHOLIC BEVERAGES.**Hunting accidents.**

Implied consent to chemical test,
§15-42-127.

ALTERNATIVE FUELS AND ENERGY.

Alternative energy commission,
§§15-10-801, 15-10-802.

Biodiesel incentive act, §§15-4-2801 to 15-4-2805.

Biofuel standards, §§15-13-201 to 15-13-204.

Allowances for variances, §15-13-203.
Annual production goals, §15-13-201.
Quality determinations and testing,
§15-13-204.

State vehicles and state equipment,
§15-13-202.

Definitions, §15-13-102.

Development program, §§15-13-301 to 15-13-305.

Creation, §15-13-301.

Production incentives.

Alternative fuels distributors,
§15-13-304.

Alternative fuels producers,
§15-13-302.

Feedstock processors, §15-13-303.

Grant application process for producers, §15-13-302.

Rulemaking authority, §15-13-305.

Rulemaking authority, §15-13-205.

Development program, §15-13-305.

Title of act, §15-13-101.

AMENDMENT 82 BOND

FINANCING, §§15-4-3201 to 15-4-3224.

Amendment 82 agreements.

Defined, §15-4-3202.

Execution, §§15-4-3203, 15-4-3204.

Amendment 82 bonds, §§15-4-3208 to 15-4-3220.

Authorization of bonds, §15-4-3210.

Contractual obligations of state,
§15-4-3218.

Delivery of bonds, §15-4-3211.

Deposit of bond proceeds, §15-4-3213.

Discount sales, §15-4-3212.

Form and delivery of bonds,
§15-4-3211.

General obligation bonds.

Designation, §15-4-3214.

Interest, §15-4-3209.

Investment of bond proceeds,
§15-4-3213.

AMENDMENT 82 BOND**FINANCING —Cont'd****Amendment 82 bonds —Cont'd**

- Issuance, §15-4-3208.
- Maximum ceiling on bond principal, §15-4-3207.
- Public sale of bonds, §15-4-3212.
- Refunding bonds, §15-4-3217.
- Repayment of bonds.
 - Annual determination of moneys required, §15-4-3215.
- Right of action.
 - Outstanding bonds unaffected, §15-4-3219.
 - Priority of legal actions, §15-4-3220.
 - When action may be brought, §15-4-3218.
- Sale and price of bonds, §15-4-3212.
- Series of bonds, §15-4-3209.
- Tax-exempts status, §15-4-3216.
- Terms and conditions, §15-4-3209.
- Trust indenture or indentures, §15-4-3210.
- Use of proceeds, §§15-4-3208, 15-4-3217.

Audit requirements, §§15-4-3206, 15-4-3221.**Citation of act, §15-4-3201.****Compliance time period, §15-4-3206.****Definitions, §15-4-3202.****Development finance authority.**

- Powers and duties, §15-4-3223.

Economic development commission.

- Powers and duties, §15-4-3223.

Monitoring and reporting,

- §§15-4-3221, 15-4-3224.
- Audit of accounts, §15-4-3221.
- Legislative reporting requirements, §15-4-3224.

Penalties, §15-4-3205.**Proposed projects.**

- Defined, §15-4-3202.
- Project qualification, §15-4-3203.
- Release of information, §15-4-3222.

Qualified Amendment 82 projects.

- Designation, §15-4-3203.
- Release of information, §15-4-3222.

Reports.

- Monitoring and reporting, §15-4-3221.
- Public reporting requirements, §15-4-3224.

Title of act, §15-4-3201.**APPEALS.****Amendment 82 bonds.**

- Right of action.
- Priority of legal actions, §15-4-3220.

Brine production.

- Appellate procedure, §15-76-322.
- Procedure on appeal, §15-76-322.

APPEALS —Cont'd**Brine production —Cont'd**

- Judicial review, §15-76-321.

Groundwater.

- Decisions and actions under subchapter, §15-22-912.

Mines and minerals.

- Lease of mineral rights.
- Validity of lessee's title, §15-56-302.

Natural resources commission.

- Dam construction, §15-22-209.
- Rules, regulations or orders, §15-22-209.

Oil and gas, §15-72-110.

- Court review by aggrieved person, §15-72-106.

Surface coal mining and reclamation.

- Administrative review.
- Costs, §15-58-213.
- Judicial review, §15-58-212.
- Costs, §15-58-213.

Trees and timber.

- State lands.
- Unlawful cutting or removal, §15-32-305.

APPROPRIATIONS.**Energy.**

- Southern states energy compact, §15-10-403.

Natural resources commission.

- Use of appropriated funds, §15-22-513.

ARKANSAS ALTERNATIVE FUELS DEVELOPMENT ACT,

- §§15-13-101 to 15-13-305.

ARKANSAS AMENDMENT 82 IMPLEMENTATION ACT,

- §§15-4-3201 to 15-4-3224.

ARKANSAS BROWNFIELD REVOLVING LOAN FUND ACT,

- §§15-5-1501 to 15-5-1511.

ARKANSAS CAPITAL DEVELOPMENT COMPANY ACT,

- §§15-4-1001 to 15-4-1031.

ARKANSAS DEVELOPMENT FINANCE AUTHORITY.**Venture capital investment.**

- Powers of authority, §15-5-1409.

ARKANSAS ECONOMIC DEVELOPMENT GENERAL OBLIGATION BONDS.

- General obligation economic development superprojects bond and project funding, §§15-4-3001 to 15-4-3023.

**ARKANSAS HOUSING TRUST
FUND ACT OF 2009**, §§15-5-1701
to 15-5-1709.

**ARKANSAS HUNTING HERITAGE
PROTECTION ACT**, §§15-41-301
to 15-41-304.

Definitions, §15-41-303.

Legislative findings, §15-41-302.

Recreational hunting, §15-41-304.

Short title, §15-41-301.

**ARKANSAS NATURAL AND
CULTURAL RESOURCES
COUNCIL**, §§15-12-101 to
15-12-103.

**ARKANSAS PORT PRIORITY
IMPROVEMENT PROGRAM**,
§§15-23-901 to 15-23-906.

Application and award, §15-23-906.

Authority to establish programs,
§15-23-904.

Definitions, §15-23-902.

Fund created, §15-23-903.

Rules and regulations, §15-23-905.

Title, §15-23-901.

**ARKANSAS POULTRY FEEDING
OPERATIONS REGISTRATION
ACT**, §§15-20-901 to 15-20-906.

**ARKANSAS PUBLIC ROADS
IMPROVEMENTS CREDIT ACT**,
§§15-4-2301 to 15-4-2307.

**ARKANSAS RESEARCH ALLIANCE
ACT**, §§15-3-301 to 15-3-306.

**ARKANSAS RESEARCH MATCHING
FUND**.

Administration, §15-3-203.

Creation, §15-3-202.

Disbursement of funds, §15-3-204.

Legislative intent, §15-3-201.

Matching funds, §15-3-205.

Prohibition on use of funds,
§15-3-207.

Reports, §15-3-206.

Rules and regulations.

Promulgation of, §15-3-208.

**ARKANSAS RETIREMENT
COMMUNITY PROGRAM ACT**,
§§15-14-101 to 15-14-108.

**ARKANSAS RISK CAPITAL
MATCHING FUND ACT OF 2007**,
§§15-5-1601 to 15-5-1609.

**ARKANSAS RIVER BASIN
COMPACT**, §15-23-401.

**ARKANSAS RIVER WATERSHED.
Nutrient surplus areas.**

Upper river watershed.

Areas declared, §15-20-1104.

**ARKANSAS SEISMOLOGICAL
OBSERVATORY**, §§15-21-601 to
15-21-603.

**ARKANSAS SOIL AND WATER
CONSERVATION COMMISSION**,
§§15-22-201 to 15-22-223.

**ARKANSAS SOIL NUTRIENT
APPLICATION AND POULTRY
UTILIZATION ACT**, §§15-20-1101
to 15-20-1114.

**ARKANSAS SOIL NUTRIENT
MANAGEMENT PLANNER AND
APPLICATOR CERTIFICATION
ACT**, §§15-20-1001 to 15-20-1008.

**ARKANSAS WATER, WASTE
DISPOSAL, AND POLLUTION
ABATEMENT FACILITIES
FINANCING ACT OF 2007**,
§§15-20-1301 to 15-20-1323.

**ARKANSAS WATERWAYS
COMMISSION**, §§15-23-201 to
15-23-204.

Duties, §15-23-202.

Employment of personnel,
§15-23-203.

Establishment, §15-23-201.

Reports, §15-23-204.

**ARKANSAS WORKFORCE
INVESTMENT ACT**, §§15-4-2201
to 15-4-2212.

**ARKANSAS WORKFORCE
INVESTMENT BOARD**,
§§15-4-2204 to 15-4-2206.

**ARKANSAS WORKFORCE
INVESTMENT BOARD AND
ADULT EDUCATION STUDY
COMMITTEE**, §§15-4-2901,
15-4-2902.

ARTESIAN WELLS.

Abandoned wells.

Applicability of subchapter,
§15-22-401.

Failure of landowners to seal,
§§15-22-404, 15-22-406.

Inadequacy for home uses.

Notice to owners of land, §15-22-403.

Petition to county judge as to nearby
abandoned well, §15-22-402.

ARTESIAN WELLS —Cont'd**Abandoned wells —Cont'd**

Sealing by county judge upon failure of landowner, §15-22-404.

Expense statement of sealing well filed with county recorder, §15-22-405.

Expense statement recorded as part of deed of land.

Sums deposited with county treasurer, §15-22-408.

Unlawful to record deed without payment of recorded expenses, §15-22-407.

Filing of expense statement by judge, §15-22-405.

Construction and interpretation.

Abandoned wells.

Applicability of subchapter, §15-22-401.

Inadequacy for home uses.

Abandoned wells.

Notice to owners of land, §15-22-403.

Petition to county judge as to nearby abandoned well, §15-22-402.

Notice.

Inadequacy of well for home uses.

Petition to county judge as to nearby abandoned well, §15-22-402.

Recordation.

Abandoned wells.

Sealing by county judge upon failure of landowner.

Expense statement recorded as part of deed, §15-22-406.

Unlawful to record deed without payment of recorded expenses, §15-22-407.

Sealing by county judge upon failure of landowner.

Filing of expense statement by judge, §15-22-405.

Recordation of expense statement as part of deed of land, §15-22-406.

ASSESSMENTS.**Mines and minerals.**

Claims on public lands.

Affidavit of assessment work, §15-56-203.

Oil and gas commission, §15-71-107.

Purchaser to deduct and remit assessment to commission, §15-71-108.

Remission by producer, §15-71-108.

ATTACHMENT.**Trees and timber.**

State lands.

Unlawful cutting or removal.

Attachment against property of violator, §15-32-301.

Issuance of attachment, §15-32-302.

ATTORNEYS AT LAW.**Liquefied petroleum gas.**

Employment of counsel by director, §15-75-206.

Oil and gas.

Fees.

Proceeds.

Actions for nonpayment.

Award of attorney's fees, §15-74-603.

Oil and gas commission.

Counsel for commission, §15-71-104.

ATTORNEYS' FEES.**Oil and gas.**

Proceeds.

Actions for nonpayment.

Award of attorney's fees, §15-74-603.

Spills of crude oil or produced water.

Actions by surface owners and tenants for restoration or remediation, §15-72-219.

AUCTIONS AND AUCTIONEERS.**Fishing.**

Taking fish from fish farm unlawful.

Confiscated property to be sold at public auction, §15-43-330.

AUDITOR OF STATE.**Oil and gas.**

Payment of vouchers of commission, §15-71-109.

AUDITS AND AUDITORS.**Amendment 82 bond financing.**

Audit requirements, §15-4-3206.

Capital development companies.

Report, §15-4-1028.

Consolidated incentive act.

Economic incentive programs, §15-4-220.

Development authority.

Annual audit, §15-5-210.

Economic development commission.

Audit of economic incentive programs, §15-4-220.

AUDITS AND AUDITORS —Cont'd**Science and technology authority.**

Annual audit, §15-3-116.

Sparta aquifer critical groundwater counties.

Conservation boards.

Annual financial audit and report,
§15-22-1213.**AUTHORITIES.****Development finance authority,**

§§15-5-101 to 15-5-422.

Science and technology authority,

§§15-3-101 to 15-3-135.

B**BANKS AND FINANCIAL INSTITUTIONS.****Capital development companies,**

§§15-4-1001 to 15-4-1031.

Development finance corporations,

§§15-4-901 to 15-4-927.

Income tax.

Capital development companies.

Credits, §15-4-1026.

Industrial development.Membership in county and regional
industrial development companies,
§§15-4-1217 to 15-4-1219.**BEAVERS.****Hunting.**

Control fund, §15-42-125.

BIODIESEL INCENTIVE ACT,

§§15-4-2801 to 15-4-2805.

Definitions, §15-4-2802.**Grants for producers,** §15-4-2804.**Income tax credit for suppliers,**

§15-4-2803.

Producer incentives, §15-4-2804.**Rules and regulations,** §15-4-2805.**Title of act,** §15-4-2801.**BIOFUEL.****Alternative fuels development,**

§§15-13-101 to 15-13-305.

BIRDS.**Double-crested cormorants.**

Elimination, §15-46-106.

Sanctuaries.

Generally, §§15-45-209 to 15-45-211.

State parks as bird sanctuaries,
§15-45-211.**BLOOD TESTS.****Hunting accidents.**Implied consent to breath analysis,
§15-42-127.**BOARDS AND COMMISSIONS.****Alternative energy commission,**

§§15-10-801, 15-10-802.

Arkansas waterways commission,

§§15-23-201 to 15-23-204.

Conservation.

Natural resources commission,

§§15-20-201 to 15-20-210.

Geographic information systems

board, §§15-21-501 to 15-21-504.

Information age communitiescommission, §§15-9-101 to
15-9-105.**Keep Arkansas Beautiful**Commission, §§15-11-601 to
15-11-604.**Oil and gas.**

Interstate oil compact commission,

§§15-72-902, 15-72-904.

Ouachita river commission,

§§15-23-801 to 15-23-806.

State parks, recreation and travelcommission, §§15-11-201 to
15-11-211.**Workforce investment board,**

§§15-4-2204 to 15-4-2206.

BOATS AND OTHER SMALL WATERCRAFT.**Eleven Point river.**

Motorboats prohibited, §15-23-105.

Motorboats.

Defined, §15-23-105.

Eleven Point river.

Prohibited, §15-23-105.

BOND ISSUES.**Actions.**Economic development superprojects
bonds.

Preferred cause.

Actions involving validity of
subchapter or bonds issued,
§15-4-3022.**Amendment 82 bonds.**General provisions, §§15-4-3208 to
15-4-3220.**Capital development companies.**Arkansas securities act, compliance,
§15-4-1022.

Investments.

Eligibility for certain investments,
§15-4-1024.

Issuance authorized, §15-4-1018.

Obligations as negotiable instruments,
§15-4-1023.Rights of other corporations and
financial institutions, §15-4-1019.

BOND ISSUES —Cont'd**Capital development companies —Cont'd**

Taxation.

Exemption from certain taxes,
§15-4-1025.

Development finance corporations.

Exemption from Arkansas securities
act, §15-4-920.

Investments.

Eligibility for certain investments,
§15-4-924.

Issuance authorized, §15-4-923.

Obligations as negotiable instruments,
§15-4-921.

Taxation.

Exemption of interest and
obligations from certain taxes,
§15-4-925.

Economic development general obligation superprojects bond and project funding act, §§15-4-3001 to 15-4-3023.**Natural resources commission.**

Arkansas water, waste disposal, and
pollution abatement facilities
financing act of 2007,
§§15-20-1301 to 15-20-1323.

Water resources development,
§§15-22-1301 to 15-22-1313.

Petroleum storage tank trust fund bond financing, §§15-5-1201 to 15-5-1210.**Private activity bond allocation.**

Allocation of 2008 housing act volume
cap, §15-5-610.

Allocation of state ceiling.

Aggregate amounts allocated,
§15-5-603.

Aggregate percentages allocated,
§15-5-603.

Applicability of provisions,
§15-5-601.

Balance of state ceiling.

Allocation, §15-5-606.

Carryforwards, §15-5-606.

Delegation of functions, §15-5-602.

Effective date of provisions,
§15-5-601.

Fees.

Filing fee, §15-5-609.

Filing with president of development
finance authority, §15-5-604.

Fee, §15-5-609.

Forms, §15-5-608.

Notice of issuance where filing not
made, §15-5-605.

Records of filings, §15-5-607.

BOND ISSUES —Cont'd**Private activity bond allocation —Cont'd**

Allocation of state ceiling —Cont'd

Filing with president of development
finance authority —Cont'd

Reservation of volume cap and
notice of issuance of bonds,
§15-5-604.

Forms for filings.

Acceptable forms, §15-5-608.

Generally, §15-5-603.

Multifamily residential housing
bonds.

Allocation of volume cap,
§15-5-605.

President of development finance
authority.

Delegation of functions, §15-5-602.

Filing with president prior to
issuance of bonds, §§15-5-604,
15-5-605, 15-5-607 to
15-5-609.

Records of filings, §15-5-607.

Volume cap, allocation of.

Multifamily residential housing
bonds, §15-5-605.

Volume cap, reservation of.

Filing with president of
development finance
authority, §15-5-604.

Development finance authority.

General provisions, §§15-5-101 to
15-5-422.

State of Arkansas economic development general obligation bonds.

Generally, §§15-4-3001 to 15-4-3023.

Waste and pollution abatement financing, §§15-22-705 to 15-22-714.**Water, waste disposal, and pollution abatement facilities financing act of 2007, §§15-20-1301 to 15-20-1323.****BONDS, SURETY.****Economic development.**

Director, §15-4-206.

Forests and forestry.

State forester, §15-31-104.

Geological survey.

State geologist, §15-55-204.

Industrial development.

Bond guaranty for employee stock
purchases, §15-4-104.

BONDS, SURETY —Cont'd**Mines and minerals.**

Lease of mineral rights.

Life tenants.

Trustee under control of court,
§15-56-406.

Quarry operations, §15-57-412.

Natural resources commission.

Executive director, §15-20-205.

Oil and gas.Director of production and
conservation, §15-71-105.

Lease of oil, gas and mineral interests.

Trustee for remaindermen,
§§15-73-304, 15-73-306.**Quarry operations, §15-57-412.****State publicity.**State parks, recreation and travel
commission.

Director, §15-11-205.

Surface coal mining and**reclamation, §15-58-509.****Trees and timber.**

County timber inspectors, §15-32-203.

Actions on bonds, §15-32-204.

Bonds filed in recorder's office,
§15-32-204.**Trusts and trustees.**

Lease of oil, gas and mineral interests.

Life estates.

Trustee for remaindermen,
§§15-73-304, 15-73-306.**BREATH TESTS.****Hunting accidents.**Implied consent to breath analysis,
§15-42-127.**BRINE PRODUCTION.****Abandoned wells, §15-76-319.****Accounts and accounting.**

Valuation of brine, §15-76-315.

Appeals.

Judicial review, §15-76-321.

Procedure on appeal, §15-76-322.

Declaration of policy, §15-76-301.**Definitions, §15-76-302.****Environmental quality department.**Jurisdiction of department not
affected, §15-76-324.**Fees.**

Drilling permits, §15-76-318.

From tracts within unit, §15-76-316.**Injunctions.**

Against commission, §15-76-305.

By commission, §15-76-304.

Judicial review, §15-76-321.

Procedure on appeal, §15-76-322.

BRINE PRODUCTION —Cont'd**Jurisdiction.**

Oil and gas commission, §15-76-306.

Liability.

Unit expenses, §15-76-317.

Monopolies and restraint of trade.

Formation of units.

No violation of statutes, §15-76-320.

Oil and gas commission.Administration and enforcement of
provisions, §15-76-301.

Authority, §15-76-306.

Defined, §15-76-302.

Injunctions.

Against commission, §15-76-305.

By commission, §15-76-304.

Jurisdiction, §15-76-306.

Procedure, §15-76-307.

Rules and regulations.

Promulgation by commission,
§15-76-307.Subpoena power of commission,
§15-76-323.**Orders.**Formation of brine production units,
§15-76-310.

Contents of order, §15-76-311.

Penalty, §15-76-303.**Permits.**

Drilling permits, §15-76-318.

Fees, §15-76-318.

Petitions.Formation of brine production units,
§15-76-309.**Policy declaration, §15-76-301.****Royalties, §15-76-314.****Rules and regulations, §15-76-307.**Promulgation by commission,
§15-76-307.**Severance tax.**

Drilling permits, §15-76-318.

Fees, §15-76-318.

Fees.

Drilling permits, §15-76-318.

Subpoenas.

Power of commission, §15-76-323.

Units.

Area, §15-76-308.

Defined, §15-76-302.

Formation, §15-76-308.

Orders for formation, §15-76-310.

Contents of formation, §15-76-311.

Petition for formation, §15-76-309.

Inclusion of adjacent tracts,
§15-76-312.

Liability for unit expenses, §15-76-317.

Monopolies and restraint of trade.

Formation of violation of statutes,
§15-76-320.

BRINE PRODUCTION —Cont'd**Units —Cont'd**

Operators.

Designation, §15-76-313.

Orders.

Formation of units, §15-76-310.

Contents of order, §15-76-311.

Participation by owners, §15-76-314.

Production from tracts within unit,
§15-76-316.

Royalties, §15-76-314.

Unlawful drainage, §15-76-312.

Valuation of brine, §15-76-315.**Wells.**

Abandoned wells, §15-76-319.

Drilling permits, §15-76-318.

**BROWNFIELD REVOLVING LOAN
FUND**, §§15-5-1501 to 15-5-1511.**Administration**, §15-5-1505.**Administrative services fees**,
§15-5-1509.

Collection, §15-5-1510.

Allocation from treasurer of state,
§15-5-1507.**Bonds issued by authority.**Use of fund as security for,
§15-5-1508.**Definitions**, §15-5-1502.**Deposit of money into fund**,
§15-5-1504.Acceptance from treasurer of state,
§15-5-1507.**Established**, §15-5-1503.**Fees for administrative services**,
§15-5-1509.

Collection, §15-5-1510.

Grants, §15-5-1506.**Implementation, regulation,
adoption**, §15-5-1511.**Loans**, §15-5-1506.**Regulations to implement, adoption**,
§15-5-1511.**Sources**, §15-5-1504.**Title of act**, §15-5-1501.**Uses of money in fund**, §15-5-1503.**Withdrawals**, §15-5-1505.**BUILDINGS AND CONSTRUCTION.****Natural resources commission.**

Dam construction.

Permits, §§15-22-210 to 15-22-214.

**BUSINESS GROWTH AND
EXPANSION.****Consolidated incentive act of 2003**,
§§15-4-2701 to 15-4-2714.**C****CACHE RIVER.****Navigable rivers.**Declaration as nonnavigable,
§15-23-101.**CAMPING.****Hunting.**

Deer season.

Regulations for camping.

Deer hunting camp on highways
prohibited, §15-43-206.**CAPITAL ACCESS PROGRAM FOR
SMALL BUSINESSES**,
§§15-5-1101 to 15-5-1110.**Accounts.**

Loss reserve accounts, §15-5-1106.

Adoption of rules.Development finance authority,
§15-5-1109.**Citation of act**, §15-5-1101.**Claims for reimbursement**,
§15-5-1108.**Contracts.**

Contents, §15-5-1104.

Declaration of public necessity,
§15-5-1102.**Definitions**, §15-5-1103.**Enrollment of qualified loans**,
§15-5-1107.**Expenses**, §15-5-1105.**Financial institutions.**

Contracts with, §15-5-1104.

Funds, §15-5-1105.Financial report of capital access fund,
§15-5-1110.**Investment earnings**, §15-5-1105.**Legislative findings**, §15-5-1102.**Loss reserve accounts**, §15-5-1106.**Reimbursement of losses**, §15-5-1108.**Reports.**Financial report of capital access fund,
§15-5-1110.**Rules**, §15-5-1109.**Title of act**, §15-5-1101.**Transfers to loss reserve account**,
§15-5-1107.**CAPITAL DEVELOPMENT****COMPANIES**, §§15-4-1001 to
15-4-1031.**Amendments.**

Articles, §15-4-1014.

Application for approval, §15-4-1004.**Articles.**

Amendments, §15-4-1014.

CAPITAL DEVELOPMENT COMPANIES —Cont'd

Articles —Cont'd

Contents, §15-4-1013.

Recording, §15-4-1012.

Requirements, §15-4-1013.

Audit report, §15-4-1028.

Bond and notes.

Arkansas securities act, compliance,
§15-4-1022.

Investments.

Eligibility for certain investments,
§15-4-1024.

Issuance authorized, §15-4-1018.

Obligations as negotiable instruments,
§15-4-1023.

Rights of other corporations and
financial institutions, §15-4-1019.

Taxation.

Exemption from income tax,
§15-4-1025.

Business laws, applicability, §15-4-1031.

Cease and desist orders.

Power of commissioners, §15-4-1028.

Certificates of organization.

Commencement of corporate existence,
§15-4-1012.

Citation of subchapter, §15-4-1001.

Conflict of laws.

Business laws with subchapter,
§15-4-1031.

Consolidation, §15-4-1030.

Construction and interpretation.

Liberal construction of act, §15-4-1003.

Definitions, §15-4-1002.

Dissolution, §15-4-1029.

Dividends and distributions, §15-4-1017.

Duties.

Generally, §15-4-1016.

Equity interest.

Rights, powers and privileges of
owners, §15-4-1019.

Transfer, §15-4-1015.

Establishment.

Application for approval, §15-4-1004.

Commencement of existence,
§15-4-1012.

Ex officio members of governing board, §15-4-1008.

Governing board.

Ex officio directors, §15-4-1008.

Liability, §15-4-1009.

Management, §15-4-1015.

Governing documents.

Application for approval accompanied
by, §15-4-1004.

CAPITAL DEVELOPMENT COMPANIES —Cont'd

Impaired capital, §15-4-1028.

Income tax.

Credits, §15-4-1026.

Exemption, §15-4-1025.

Injunctions.

Power of commissioners, §15-4-1028.

Interest.

Bond issues.

Exemption of interest from income
tax, §15-4-1025.

Investigation and approval by board, §15-4-1011.

Investigations as to violation, §15-4-1028.

Investments.

Eligibility for certain investments,
§15-4-1024.

Policies, §15-4-1027.

Report on transactions, §15-4-1028.

Liability.

Board members and officers,
§15-4-1009.

Liberal construction of provisions, §15-4-1003.

Loans.

Policies generally, §15-4-1027.

Management, §15-4-1015.

Merger, §15-4-1030.

Minority and women owned businesses.

Assistance, powers, investment
policies, restrictions, §15-4-1016.

Negotiable instruments.

Bonds, notes and debentures.

Obligations and negotiable
instruments, §15-4-1023.

Officers.

Liability, §15-4-1009.

Organization.

Certificate, §15-4-1012.

Commencement of existence,
§15-4-1012.

Investigation and approval by board,
§15-4-1011.

Powers.

Generally, §15-4-1016.

Recording of articles, §15-4-1012.

Reports.

Investment transactions and audit,
§15-4-1028.

Rules and regulations.

Adoption, §15-4-1029.

Supervision.

Generally, §15-4-1028.

CAPITAL DEVELOPMENT**COMPANIES —Cont'd****Taxation.**

Bond issues.

Exemption from income tax,
§15-4-1025.

Income tax credit, §15-4-1026.

Title of subchapter, §15-4-1001.

Transfer of equity interest,
§15-4-1015.

CAPITAL INVESTMENT.

Consolidated incentive act,
§§15-4-2701 to 15-4-2714.

**CATFISH INDUSTRY
DEVELOPMENT PROGRAM**,
§15-5-805.

CAVES.

Conservation, §15-20-605.

Definitions, §15-20-602.

Enforcement of subchapter,
§15-20-607.

Legislative findings, §15-20-601.

Liability.

Owners.

Limited, §15-20-606.

Owners.

Enforcement of subchapter,
§15-20-607.

Liability.

Limitations, §15-20-606.

Penalties.

Pollution, §15-20-604.

Vandalism, §15-20-603.

Policy of state, §15-20-601.

Pollution.

Penalties, §15-20-604.

Prohibited, §15-20-604.

Vandalism.

Penalties, §15-20-603.

Prohibited, §15-20-603.

CEASE AND DESIST ORDERS.

Capital development companies.

Power of commissioners, §15-4-1028.

**CENTERS FOR APPLIED
TECHNOLOGY.**

Advisory committees, §15-3-133.

Criteria for designation, §15-3-132.

Defined, §15-3-130.

Designation.

Authority to designate, §15-3-131.

Criteria, §15-3-132.

Disposition of funds, §15-3-134.

Funds.

Disposition, §15-3-134.

Science and technology authority.

Authority to designate, §15-3-131.

**CHURCHES AND OTHER PLACES
OF WORSHIP.****Leases.**

Oil, gas and mineral interests,
§15-73-202.

Oil and gas.

Lease of oil, gas and mineral interests,
§15-73-202.

CIVIL PROCEDURE.**Oil and gas.**

Commission, §15-71-111.

CLAIMS.**United States.**

Mines and minerals.

Claims on public lands, §§15-56-201
to 15-56-205.

COAL.

Lignite development, §§15-55-401 to
15-55-405.

Mines and minerals.

Short line railroads, §§15-56-501 to
15-56-505.

Surface coal mining and reclamation,
§§15-58-101 to 15-58-510.

Railroads.

Short line railroads, §§15-56-501 to
15-56-505.

Reclamation.

Surface coal mining and reclamation,
§§15-58-101 to 15-58-510.

**Surface coal mining and
reclamation**, §§15-58-101 to
15-58-510.

COLLEGES AND UNIVERSITIES.

Centers for applied technology,
§§15-3-130 to 15-3-134.

**COMMISSION ON INFORMATION
AGE COMMUNITIES ACT**,
§§15-9-101 to 15-9-105.

COMMON CARRIERS.**Mines and minerals.**

Short line railroads.

Rights, powers and privileges of
common carrier, §15-56-503.

COMPACTS.**Energy.**

Southern states energy compact,
§§15-10-401 to 15-10-404.

Fires and fire prevention.

South central interstate forest fire
protection compact, §§15-33-101 to
15-33-103.

Flood control.

Power of soil and water commission to
enter into, §15-24-106.

COMPACTS —Cont'd**Forest fires.**

South central interstate forest fire protection compact, §§15-33-101 to 15-33-103.

Forests and forestry.

South central interstate forest fire protection compact, §§15-33-101 to 15-33-103.

Oil and gas.

Interstate compact to conserve oil and gas, §§15-72-901 to 15-72-904.

Red River compact, §§15-23-501 to 15-23-503.**Rivers.**

Arkansas river basin compact, §15-23-401.

Natural and scenic rivers system.

Proposed compacts with federal government.

Approval of general assembly required, §15-23-310.

Red River compact, §§15-23-501 to 15-23-503.

Southern states energy compact, §§15-10-401 to 15-10-404.**COMPENSATING TAX.****Exemptions.**

Steel manufacturers tax incentives, §15-4-2403.

Steel manufacturers tax incentives.

Exemptions, §15-4-2403.

COMPLAINTS.**Natural resources commission.**

Verified complaint requirements, §15-20-101.

Trees and timber.

State lands.

Unlawful cutting or removal, §15-32-303.

Verification of complaint, §15-32-304.

COMPOST.**Poultry feeding operations.**

Registration with natural resources commission, §§15-20-901 to 15-20-906.

Soil nutrient application and poultry litter utilization.

General provisions, §§15-20-1101 to 15-20-1114.

Soil nutrient management planners and applicators.

Certification, §§15-20-1001 to 15-20-1008.

Surplus nutrient removal incentives, §§15-20-1201 to 15-20-1206.**COMPRESSED GASES.****Transportation, §15-75-109.****CONFIDENTIALITY OF INFORMATION.****Oil and gas.**

Confidential treatment of reports, §15-72-805.

CONFLICT OF LAWS.**Capital development corporations.**

Business laws with subchapter, §15-4-1031.

CONFLICTS OF INTEREST.**Development finance authority.**

Contracts.

Personal interest in contracts prohibited, §15-5-204.

Forests and forestry.

Aid to owners of private forest land.

Interest in purchase of estimated timber prohibited, §15-31-204.

Oil and gas.

Gasoline, fuel, illuminating and heating oil.

Manufacture or sale.

Inspectors not to be interested, §15-74-403.

Penalties.

Surface coal mining and reclamation, §15-58-206.

Science and technology authority, §15-3-112.**Surface coal mining and reclamation.**

Penalties, §15-58-206.

Persons performing function or duty under act.

Financial interest in surface coal mining prohibited, §15-58-206.

CONSENT.**Hunting accidents.**

Tests for drugs and alcohol, implied consent, §15-42-127.

Liquefied petroleum gas.

Containers bearing owner's identification.

Use of container without consent of owner, §15-75-406.

CONSERVATION.**Boards and commissions.**

Natural resources commission, §§15-20-201 to 15-20-210.

Easements, §§15-20-401 to 15-20-410.**Environmental protection, §§15-20-301 to 15-20-319.**

CONSERVATION —Cont'd**Game and fish.**

Wildlife habitat conservation on private lands.

Licensing agreements, §15-45-101.

Groundwater.

Water conservation education and information program.

Components.

Minimum components, §15-22-907.

Development by commission, §15-22-907.

Natural and scenic rivers system,

§§15-23-301 to 15-23-315.

Rivers.

Natural and scenic rivers system.

General provisions, §§15-23-301 to 15-23-315.

Waters and watercourses.

Natural resources commission,

§§15-22-201 to 15-22-223.

Water supply and waterworks,

§§15-22-201 to 15-22-223.

Wildlife habitat conservation on private lands.

Licensing agreements, §15-45-101.

CONSERVATION EASEMENTS.

Acceptance, §15-20-405.

Actions.

Judicial action, §15-20-409.

Applicability of subchapter, §15-20-403.

Arkansas commemorative commission.

Easements held by, §15-20-410.

Assignment, §15-20-404.

Citation of subchapter, §15-20-401.

Conveyance, §15-20-404.

Creation, §15-20-404.

Definitions, §15-20-402.

Duration, §15-20-406.

Enforcement, §15-20-409.

Existing interest.

Effect on, §15-20-407.

Holder.

Defined, §15-20-402.

Judicial action, §15-20-409.

Injunctions.

Enforcement, §15-20-409.

Modification, §15-20-404.

Old State House commission.

Easements held by, §15-20-410.

Recordation, §15-20-404.

Release, §15-20-404.

Rivers.

Natural and scenic rivers system.

Power of commission to obtain, §15-23-309.

CONSERVATION EASEMENTS

—Cont'd

Short title of subchapter, §15-20-401.

Termination, §15-20-404.

Third-party right of enforcement.

Defined, §15-20-402.

Judicial action, §15-20-409.

Validity, §15-20-408.

CONSOLIDATED INCENTIVE ACT,

§§15-4-2701 to 15-4-2714.

Administration of chapter.

Economic development commission, §15-4-2710.

Administration of incentives, §15-4-2711.

Combining incentives, §15-4-2712.

Coordination with other economic programs, §15-4-2714.

Definitions, §15-4-2703.

Economic development commission.

Audit of economic incentive programs, §15-4-220.

Economic incentive fund, §15-4-2707.

Economic prosperity of counties.

Tier system ranking counties.

Department to establish, §15-4-2704.

Investment tax incentives,

§15-4-2706.

Administration, §15-4-2711.

Job creation special incentive.

Targeted businesses, §15-4-2709.

Job-creation tax credit, §15-4-2705.

Legislative intent, §15-4-2701.

Payroll rebates, §15-4-2707.

Administration, §15-4-2711.

Powers and duties of commission, §15-4-2710.

Research and development tax credit, §15-4-2708.

Restrictions incentives, §15-4-2712.

Targeted business special incentive.

Job creation, §15-4-2709.

Tier system ranking counties.

Department to establish, §15-4-2704.

Title of act, §15-4-2702.

CONSTRUCTION ASSISTANCE**REVOLVING LOAN FUND,**

§§15-5-901 to 15-5-910.

Accounts, §15-5-901.

Administration, §15-5-902.

Allocations from state treasurer.

Authority to accept, §15-5-905.

Bonds issued by commission.

Use of fund as security for, §15-5-906.

Cash funds, §15-5-903.

Construction assistance

administrative account, §15-5-901.

**CONSTRUCTION ASSISTANCE
REVOLVING LOAN FUND**

—Cont'd

**Construction assistance revolving
loan fund account**, §15-5-901.**Contracts in connection with
operation.**

Authority to enter into, §15-5-902.

Definitions, §15-5-909.**Deposits**, §15-5-903.**Established**, §15-5-901.**Federal grants deposited into fund**,
§15-5-905.**Fees for technical and
administrative services**,
§15-5-904.**Forgiveness of principal of loans**,
§15-5-907.**General revenue turnback.**

Withholding, §15-5-908.

Grants.

Authority to accept, §15-5-903.

Interest rates on loans, §15-5-910.**Remedial action**, §15-5-901.**Removal from account**, §15-5-907.**Rulemaking power**, §15-5-902.**State grants account**, §15-5-901.**Substitution of loans**, §15-5-907.**Uses**, §15-5-901.**Withholding general revenue
turnback**, §15-5-908.**CONSTRUCTIVE SERVICE.****Warning orders.**

Logging.

Unlawful cutting or removal.

Complaint and notice when no one
in possession, §15-32-305.

Oil and gas.

Illegal oil and gas.

Notice of proceedings,

§§15-72-403, 15-72-404.

Partition, §15-73-403.

CONTAINERS.**Oil and gas.**

Identification of container, §15-75-406.

CONTRACTS.**Arkansas research alliance act.**Contracting with research alliance,
§15-3-306.**Development finance authority.**Personal interest in contracts
prohibited, §15-5-204.**Economic development council**,
§15-4-214.**Inventor's assistance.**Product development contracts,
§15-4-1407.**CONTRACTS —Cont'd****Natural heritage commission**,
§15-23-310.**Natural resources commission.**

Power to contract, §15-20-207.

United States.

Water development projects.

Cooperation or contract with

federal government

unimpaired by subchapter,
§15-22-502.**Oil and gas.**

Weights and measures.

Standard gas measurement law.

Sale or delivery of gas by volume,
§15-74-305.**Science and technology authority.**

Personal interest prohibited,

§15-3-112.

**State parks, recreation and travel
commission.**

Disposal of railroad track material.

Gift or contract to a regional

intermodal facilities authority,
§15-11-211.**State publicity.**

Rules and procedures governing.

Professional services of advertising
agencies, §15-11-102.Purchase of printed material and
specialty items for advertising
purposes, §15-11-102.**Tourism development**, §15-11-506.**Water pollution abatement facilities
bonds.**No impairment of bond obligations,
§15-20-1315.**CONVEYANCES.****Groundwater.**

Rights, §15-22-911.

COORDINATE SYSTEM, §§15-21-301
to 15-21-310.**Coordinates**, §15-21-305.**Creation of zones**, §15-21-302.**Definition of system**, §15-21-306.**Designation of system**, §15-21-301.**Designations within zones**,
§15-21-303.**Land lying in both zones**, §15-21-304.**Maps and surveys.**

Description by coordinate

supplemental to references to

public land surveys, §15-21-309.

References to system, §15-21-308.

Reliance on system not required,
§15-21-310.

COORDINATE SYSTEM —Cont'd**Marking of coordinates on ground,** §15-21-306.**Proximity to stations required for recording,** §15-21-307.**CORMORANTS.****Double-crested cormorants.**

Elimination, §15-46-106.

CORPORATIONS.**Capital development companies,** §§15-4-1001 to 15-4-1031.**Oil and gas.**

Disposal of salt water, §15-76-202.

Surface coal mining and reclamation.

Compliance with provisions, §15-58-105.

CORRECTION FACILITIES**PRIVATIZATION ACCOUNT.****Development finance authority,** §15-5-213.**CORRECTIONS.****Funds.**

Correction facilities construction fund, §§15-5-213, 15-5-422.

COSTS.**Oil and gas.**

Spills of crude oil or produced water, actions by surface owners and tenants for restoration or remediation, §15-72-219.

Surface coal mining and reclamation.

Administrative and judicial review, §15-58-213.

State abandoned mine reclamation program projects, §15-58-403.

COUNTIES.**Brine production.**

Violation of provisions, §15-76-303.

Consolidated incentive act.

Tier system ranking counties.

Department to establish, §15-4-2704.

Economic development.

Consolidated incentive act.

Tier system ranking counties, §15-4-2704.

Game and fish.

Refuges.

Appraisal board in county, §15-45-209.

Damages to crop, §15-45-209.

Timber inspectors, §§15-32-201 to 15-32-208.**Trees and timber.**

County timber inspectors, §§15-32-201 to 15-32-208.

COUNTY AND REGIONAL**INDUSTRIAL DEVELOPMENT****COMPANIES,** §§15-4-1201 to 15-4-1228.**COUNTY CLERKS.****Mercury refiners and businesses.**

Licenses:

Applications and licenses recorded by clerk, §15-60-109.

COUNTY SURVEYORS.**Division of land survey.**

Cooperation and assistance, §15-21-207.

Trees and timber.

County timber inspectors.

County surveyors ex officio county timber inspectors, §15-32-201.

CRIMINAL HISTORY RECORD**CHECKS.****Development finance authority,** §15-5-214.**CRIMINAL LAW AND PROCEDURE.****Brine production,** §15-76-303.

Improper disposal of salt water, §15-76-201.

Cave pollution, §15-20-604.**Cave vandalism,** §15-20-603.**Development finance authority contracts.**

Personal interest of members, officers, etc., in contracts, §15-5-204.

Dogs.

Running at large.

Enforcement of regulation by employees of game and fish commission, §15-41-113.

Fishing.

Barrel or pond nets, §15-43-324.

Electrical devices for stunning and taking fish, §15-43-316.

Enclosed lake or pond.

Taking fish from, §15-43-329.

Fish farm.

Taking fish from, §15-43-330.

Hoop nets, §15-43-324.

Licenses.

Fishing without license, §15-42-101.

Nonresident fishing license, §15-42-107.

Issuance in neighboring states, §15-42-122.

Public water withdrawal endangering fish, §15-44-111.

Fish runways.

Obstruction, §15-44-110.

CRIMINAL LAW AND PROCEDURE

—Cont'd

Game and fish refuges.Entire state as wild fowl sanctuary,
§15-45-210.State parks as bird sanctuaries,
§15-45-211.**Hunting.**

Deer.

Firearms.

Negligent discharge while hunting
deer, §15-43-205.

Highways.

Deer hunting camp on,
§15-43-206.

Dogs.

Attempted theft or theft of licensed
dogs, §15-42-303.

Guides, §15-43-239.

Licenses.

Hunting without license, §15-42-101.

Issuance in neighboring states,
§15-42-122.

Setting fires, §15-43-107.

Shooting accidents.

Refusal to submit to tests for drugs
and alcohol, §15-42-127.Storage regulation for game animals
and birds, §15-44-108.**Liquefied petroleum gas, §15-75-103.**

Containers.

Unlawful use, §15-75-406.

Subpoenas of board.

Disobedience, §15-75-321.

**Logging without boundaries
ascertained, §15-32-101.****Logging without land survey,
§15-32-101.****Mercury refiners, §§15-60-102,
15-60-114.****Mines and minerals.**

Claims on public lands.

Indexed record books.

Failure or refusal of recorder to
keep index, §15-56-205.

Lease of mineral rights.

Failure of lessee to report output,
§15-56-311.**Natural and scenic rivers.**Impounding waters or realigning
channel, §15-23-313.**Natural area rules and regulations
violations, §15-20-502.****CRIMINAL LAW AND PROCEDURE**

—Cont'd

Oil and gas.Commissioned agents of major oil
companies.Businesses and products involving
federal energy agency fuel
allocation.Contracts requiring agents to
make certain purchases or
payments, §15-74-502.Emergency set-aside programs,
§15-72-803.Gasoline, fuel, illuminating and
heating oil, §15-74-401.Condemnation of gasoline by
inspectors.Removal or alteration of placards
attached to pumps,
§15-74-406.

Records.

Falsifying or failure to keep,
§15-72-104.

Royalties.

Willful or malicious violations of
provisions, §15-74-701.

Safe drinking water act.

Willful violation, §15-72-104.

Weights and measures.

Discounting crude for waste,
shrinkage, etc., §15-74-203.**Pollution of cave, §15-20-604.****Seismic operations.**

Permit violations, §15-71-114.

**Sparta aquifer critical groundwater
counties.**False report or tampering with meter,
§15-22-1217.**Surface coal mining and
reclamation.**

Conflicts of interest, §15-58-206.

False statement, representation or
certification, §15-58-306.Interfering with director or his agents,
§15-58-305.Violating condition of permit or order,
§15-58-304.**Timber cut without boundaries
ascertained, §15-32-101.****Timber removal without land
survey, §15-32-101.****Vandalism.**

Caves, §15-20-603.

CRIMINAL LAW AND PROCEDURE

—Cont'd

Water allocation and use.Violations of subchapter generally,
§15-22-204.**Weights and measures.**

Oil and gas.

Discounting crude for waste,
shrinkage, etc., §15-74-203.**CROPS.****Game and fish.**

Refuges.

Damages to crop, §15-45-209.

Wildlife causing crop damage,
§15-44-114.**D****DAMAGES.****Game and fish.**

Refuges.

County appraisal board.

Duty to determine damage done
by wildlife, §15-45-209.**Oil and gas.**

Lease of oil, gas and mineral interests.

Forfeiture of leases.

Failure to release, §15-73-204.

Spills of crude oil or produced water,
§15-72-219.**DAMS AND RESERVOIRS.****Construction.**

Permits, §§15-22-210 to 15-22-214.

Fishing.

Runways for fish required, §15-44-110.

Mulberry river.Unlawful to construct permanent dam,
§15-23-102.**Natural resources commission.**Storage of water in government
reservoirs.Right to acquire title and use water
stored, §15-22-218.**Permits.**Construction permits, §§15-22-210 to
15-22-214.**Water resources development.**

Defined, §15-22-602.

DECEDENTS' ESTATES.**Notice.**

Oil and gas drilling, §15-72-203.

Oil and gas.

Drilling.

Promotion, §15-72-701.

Surface owner notification,
§15-72-203.**DECEDENTS' ESTATES —Cont'd****Oil and gas —Cont'd**

Leasing, §15-73-309.

Ownership, §15-72-607.

Royalty payments, §15-74-604.

DEFENSES.**Liquefied petroleum gases.**Affirmative defenses of providers,
§15-75-112.**DEFINED TERMS.****Acquire.**Sparta aquifer critical groundwater
counties, §15-22-1203.**Active.**

Quarries, §15-57-402.

Act no. 9 bonds.

Revenue bonds, §15-4-602.

ADFA Act.Development finance authority bonds,
§15-5-403.**ADFA bonds.**

Revenue bonds, §15-4-602.

Administrative account.Construction assistance revolving loan
fund, §15-5-909.

Safe drinking water fund, §15-22-1101.

Advisory committee.

Housing trust fund, §15-5-1703.

Affected bonds.Private activity bond allocation,
§15-5-601.**Affected governmental agency.**Surface coal mining and reclamation,
§15-58-104.**Affected land.**Open-cut land reclamation,
§15-57-303.

Quarries, §15-57-402.

**Affordable housing assistance
activities.**

Tax credits, §15-5-1302.

Affordable housing unit.

Tax credits, §15-5-1302.

**Agencies of the United States
government.**Small business development,
§15-5-703.**Aggregate security value of the
contract.**Development finance authority,
§15-5-103.**Agreement.**

Tourism development, §15-11-503.

Agricultural business enterprises.Development finance authority,
§15-5-103.

DEFINED TERMS —Cont'd**Alternative fuels.**

Arkansas alternative fuels development act, §15-13-102.

Alternative fuels distributor.

Arkansas alternative fuels development act, §15-13-102.

Alternative fuels mixture.

Arkansas alternative fuels development act, §15-13-102.

Alternative fuels producer.

Arkansas alternative fuels development act, §15-13-102.

Amendment 82 agreement.

Amendment 82 bond financing, §15-4-3202.

Amortization payments.

Development finance authority bonds, §15-4-403.

Industrial revenue bonds, §15-4-602.

Angel investor.

Risk capital matching fund, §15-5-1603.

Annual payroll.

Economic development incentive, §15-4-1602.

Annual yield.

River basin compact, §15-23-401.

Appliances.

Liquefied petroleum gases, §15-75-102.

Applied research.

Consolidated incentive act, §15-4-2703.

Science and technology, §15-3-101.

Approved company.

Tourism development, §15-11-503.

Approved costs.

Tourism development, §15-11-503.

Aquatic resources.

Water pollution abatement facilities bonds, §15-20-1302.

Wetlands mitigation bank act, §15-22-1003.

Aquifer.

Brine, §15-76-302.

Ground water protection, §15-22-903.

Aquifer water.

Sparta aquifer critical groundwater counties, §15-22-1203.

Archaeological site.

Cave protection, §15-20-602.

Arkansas coordinate system 1983.

Land, §15-21-308.

Arkansas development finance authority guaranty premium payment.

Economic development, §15-5-703.

DEFINED TERMS —Cont'd**Arkansas geographic information office.**

Geographic information systems board, §15-21-502.

Arkansas spatial data infrastructure.

Geographic information systems board, §15-21-502.

Articles.

Capital development companies, §15-4-1002.

Assignment.

Oil and gas production and conservation, §15-72-802.

Atomic energy.

Nuclear power, §15-10-302.

Authority.

Housing trust fund, §15-5-1703.

Safe drinking water fund, §15-22-1101.

Average hourly wage.

Amendment 82 bond financing, §15-4-3202.

Consolidated incentive act, §15-4-2703.

Economic development act, §15-4-1902.

Enterprise zone, §15-4-1702.

Nonprofit incentive act of 2005, §15-4-3103.

Basic research.

Consolidated incentive act, §15-4-2703.

Science and technology, §15-3-101.

Below-the-line employees.

Digital product and motion picture industry development, §15-4-2003.

Beneficial use.

Ground water protection, §15-22-903.

Biodiesel fuel.

Biodiesel incentive act, §15-4-2802.

Biodiesel producer.

Biodiesel incentive act, §15-4-2802.

Biofuel.

Arkansas alternative fuels development act, §15-13-102.

Biomass.

Alternative energy commission, §15-10-802.

Arkansas alternative fuels development act, §15-13-102.

Board fund.

Development finance authority bonds, §15-5-403.

Bond guaranty.

Venture capital investment, §15-5-1403.

Bonds.

Amendment 82 bond financing, §15-4-3202.

DEFINED TERMS —Cont'd**Bonds —Cont'd**

- Development finance authority,
§15-5-103.
- General obligation economic
development superprojects bond
and funding act, §15-4-3003.
- Major industry facilities incentive,
§15-4-1802.
- Petroleum storage tank trust fund act,
§15-5-1203.
- Water pollution abatement facilities
bonds, §15-20-1302.

Brine, §15-76-302.

Brine production unit, §15-76-302.

Broker.

- Oil and gas production and
conservation, §15-72-802.

Business firm.

- Affordable neighborhood housing tax
credits, §15-5-1302.

Business law.

- Capital development companies,
§15-4-1002.

By-product material.

- Nuclear power, §15-10-302.

Capital development company,
§15-4-1002.

Capital guaranty.

- Venture capital investment,
§15-5-1403.

Capital improvements.

- Development finance authority,
§15-5-103.
- Public roads improvements tax credit,
§15-4-2303.

Cave.

- Natural resources, §15-20-602.

Center for applied technology.

- Science and technology, §15-3-130.

Certificate of competency.

- Liquefied petroleum gases, §15-75-301.

Certified nutrient applicator.

- Soil nutrient application and poultry
litter utilization, §15-20-1103.

Chief elected official.

- Workforce investment act, §15-4-2203.

Chief fiscal officer of the state.

- Amendment 82 bond financing,
§15-4-3202.

Citation.

- Quarries, §15-57-402.

Clean water act.

- Construction assistance revolving loan
fund, §15-5-909.

Clearinghouse.

- Geographic information systems board,
§15-21-502.

DEFINED TERMS —Cont'd**Coal.**

- Surface coal mining and reclamation,
§15-58-104.

Cold water solution.

- Cave protection, §15-20-602.

Commercial oil pool.

- Oil and gas production and
conservation, §15-72-701.

Commercial purposes.

- Open-cut land reclamation,
§15-57-303.

Commercial state.

- Inventors' assistance act, §15-4-1402.

Commission.

- Hunting heritage protection act,
§15-41-303.
- Quarries, §15-57-402.

Commission-managed lands.

- Hunting heritage protection act,
§15-41-303.

Communities.

- Information age communities
commission, §15-9-102.

Community lender.

- Small business loan collaboration
program, §15-4-2501.

Company.

- County and regional industrial
development companies,
§15-4-1202.

Conservation act.

- Oil and gas production and
conservation, §15-72-701.

Conservation district.

- Poultry feeding operations
registration, §15-20-903.
- Soil nutrient application and poultry
litter utilization, §15-20-1103.

Conservation easement.

- Natural resources, §15-20-402.

Conservation fee.

- Sparta aquifer critical groundwater
counties, §15-22-1203.

Conservation storage capacity.

- Red river compact, §15-23-501.

Construct.

- Development finance authority,
§15-5-103.
- Science and technology, §15-3-101.
- Sparta aquifer critical groundwater
counties, §15-22-1203.

Consumer.

- Oil and gas production and
conservation, §15-72-802.

Container.

- Liquefied petroleum gases, §15-75-102.

DEFINED TERMS —Cont'd**Contractual employee.**

Amendment 82 bond financing,
§15-4-3202.

Consolidated incentive act, §15-4-2703.

Contribution.

Public roads improvements tax credit,
§15-4-2303.

Cooperative agreement.

Water resources cost share,
§15-22-803.

Coordinate system, §15-21-306.**Corporate headquarters.**

Consolidated incentive act, §15-4-2703.
Economic development act, §15-4-1902.
Enterprise zone, §15-4-1702.

Corporate or regional headquarters.

Economic development incentive,
§15-4-1602.

Cost-sharing.

Water resources, §15-22-803.

Counterparty.

Development finance authority,
§15-5-103.

County.

Sparta aquifer critical groundwater
counties, §15-22-1203.

County average hourly wage.

Amendment 82 bond financing,
§15-4-3202.

County mapping.

Geographic information systems board,
§15-21-502.

County or state average hourly wage.

Consolidated incentive act, §15-4-2703.
Nonprofit incentive act of 2005,
§15-4-3103.

Credit.

Wetlands mitigation bank act,
§15-22-1003.

Crop.

Soil nutrient application and poultry
litter utilization, §15-20-1103.
Soil nutrient management planners
and applicators certification,
§15-20-1003.

Cubic foot of gas.

Measurement and inspection of oil and
gas, §15-74-302.

Cycling.

Oil and gas production and
conservation, §15-72-501.

Dealer.

Liquefied petroleum gases, §15-75-102.

Debt service.

Amendment 82 bond financing,
§15-4-3202.

DEFINED TERMS —Cont'd**Debt service —Cont'd**

General obligation economic
development superprojects bond
and funding act, §15-4-3003.

Pollution control, §15-22-702.

Water pollution abatement facilities
bonds, §15-20-1302.

Water resources development,
§15-22-602.

Debt service fund.

Petroleum storage tank trust fund act,
§15-5-1203.

Dedication.

Environmental quality, §15-20-312.

Default.

Quarries, §15-57-402.

Designated investor group.

Venture capital investment,
§15-5-1403.

Develop.

General obligation economic
development superprojects bond
and funding act, §15-4-3003.

Pollution control, §15-22-702.

Water pollution abatement facilities
bonds, §15-20-1302.

Water resources, §15-22-602.

Developer.

Development finance authority bonds,
§15-5-403.

Development finance corporation.

Capital development companies,
§15-4-1002.

Economic development, §15-4-903.

Diffused surface water.

Water resources, §15-22-202.

Digital basemap.

Geographic information systems board,
§15-21-502.

Digital cadastre.

Geographic information systems board,
§15-21-502.

Digital data repository.

Geographic information systems board,
§15-21-502.

Direct fund.

Small business development,
§15-5-703.

Distribution center.

Consolidated incentive act, §15-4-2703.

Economic development act, §15-4-1902.

Economic development incentive,
§15-4-1602.

Enterprise zone, §15-4-1702.

Domestic use.

Ground water protection, §15-22-903.
Water resources, §15-22-202.

DEFINED TERMS —Cont'd**Drainage.**

Water pollution abatement facilities
bonds, §15-20-1302.

Drilling unit.

Oil and gas production and
conservation, §15-72-302.

Educational facilities.

Development finance authority,
§15-5-103.

Effluent.

Brine, §15-76-302.

Eligible activities.

Housing trust fund, §15-5-1703.

Eligible applicants.

Housing trust fund, §15-5-1703.

Eligible business.

Consolidated incentive act, §15-4-2703.
Economic development act, §15-4-1902.

Eligible company.

Tourism development, §15-11-503.

Eligible facility.

Major industry facilities incentive,
§15-4-1802.

Endowment fund.

Science and technology, §15-3-101.

Enterprise.

Science and technology, §15-3-101.

Enterprise development account.

Risk capital matching fund,
§15-5-1603.

Equip.

Science and technology, §15-3-101.

Equity capital.

Capital development companies,
§15-4-1002.
Risk capital matching fund,
§15-5-1603.
Venture capital investment,
§15-5-1403.

Equity interest.

Capital development companies,
§15-4-1002.

Equity investment.

Consolidated incentive act, §15-4-2703.

Ethanol.

Arkansas alternative fuels
development act, §15-13-102.

Excess surface water.

Water resources, §15-22-304.

Exempt.

Minority business economic
development, §15-4-303.

Exhausted quarry, §15-57-402.**Existing employees.**

Amendment 82 bond financing,
§15-4-3202.
Consolidated incentive act, §15-4-2703.

DEFINED TERMS —Cont'd**Existing employees —Cont'd**

Economic development incentive,
§15-4-1602.

Enterprise zone, §15-4-1702.

Facilities.

Consolidated incentive act, §15-4-2703.
Development finance authority,
§15-5-103.
Science and technology, §15-3-101.

Fairness opinion.

Pooled loan securitization act,
§15-20-801.

Federal agency.

Rural development program,
§15-6-103.

**Federal deposit insurance
corporation.**

Amendment 82 bond financing,
§15-4-3202.
General obligation economic
development superprojects bond
and funding act, §15-4-3003.
Water pollution abatement facilities
bonds, §15-20-1302.

Federal environmental acts.

Construction assistance revolving loan
fund, §15-5-909.

Feedstock processor.

Arkansas alternative fuels
development act, §15-13-102.

Fees.

Quarries, §15-57-402.

Field.

Oil and gas production and
conservation, §§15-72-102,
15-72-701.

Film and digital product.

Digital product and motion picture
industry development, §15-4-2003.

Film office.

Digital product and motion picture
industry development, §15-4-2003.

Final approval.

Tourism development, §15-11-503.

Final cut.

Open-cut land reclamation,
§15-57-303.

Final floor.

Quarries, §15-57-402.

Final wall.

Quarries, §15-57-402.

Financial advisor.

Pooled loan securitization act,
§15-20-801.

Financial incentive agreement.

Consolidated incentive act, §15-4-2703.

DEFINED TERMS —Cont'd**Financial incentive agreement**

—Cont'd

Nonprofit incentive act of 2005,
§15-4-3103.**Financial incentive plan.**

Economic development act, §15-4-1902.

Economic development incentive,
§15-4-1602.

Enterprise zones, §15-4-1702.

Financial institution.Capital development companies,
§15-4-1002.County and regional industrial
development companies,
§15-4-1202.Digital product and motion picture
industry development, §15-4-2003.Small business capital access,
§15-5-1103.**Fine.**

Quarries, §15-57-402.

**Fire control or fire rescue
equipment.**

Forestry commission, §15-31-116.

Firm.Oil and gas production and
conservation, §15-72-802.**First purchaser.**Measurement and inspection of oil and
gas, §15-74-601.**Flood control.**Water pollution abatement facilities
bonds, §15-20-1302.**Framework data.**Geographic information systems board,
§15-21-502.**Fund.**

Safe drinking water fund, §15-22-1101.

Surface coal mining and reclamation,
§15-58-104.**Gas.**Oil and gas production and
conservation, §15-72-102.**Gas condensate.**Oil and gas production and
conservation, §15-72-501.**Gas drive.**Oil and gas production and
conservation, §15-72-501.**Gas injection.**Oil and gas production and
conservation, §15-72-501.**General local government.**

Workforce investment act, §15-4-2203.

General revenues.General obligation economic
development superprojects bond
and funding act, §15-4-3003.**DEFINED TERMS —Cont'd****GIS.**Geographic information systems board,
§15-21-502.**Governing authority.**

Consolidated incentive act, §15-4-2703.

Economic development act, §15-4-1902.

Enterprise zone, §15-4-1702.

Nonprofit incentive act of 2005,
§15-4-3103.Public roads improvements tax credit,
§15-4-2303.**Governing board.**Capital development companies,
§15-4-1002.**Governing body.**Rural development program,
§15-6-103.**Governing documents.**Capital development companies,
§15-4-1002.**Gross general revenue.**Amendment 82 bond financing,
§15-4-3202.**Gross sales revenues.**

Inventors' assistance act, §15-4-1402.

Ground water.Protection and management,
§15-22-903.**Guaranty reserve account.**Development finance authority bonds,
§15-5-403.**Guide.**Hunting and fishing regulations,
§15-43-239.**Health care facilities.**Development finance authority,
§15-5-103.**Health care project costs.**Development finance authority,
§15-5-103.**Highly compensated individual.**Digital product and motion picture
industry development, §15-4-2003.**High unemployment.**

Economic development act, §15-4-1902.

Economic development incentive,
§15-4-1602.Small business loan collaboration
program, §15-4-2501.

Tourism development, §15-11-503.

High wall.Open-cut land reclamation,
§15-57-303.**Holder.**

Conservation easement, §15-20-402.

Housing development.Development finance authority,
§15-5-103.

DEFINED TERMS —Cont'd**Housing trust fund**, §15-5-1703.**Hunting.**Hunting heritage protection act,
§15-41-303.**Illegal gas.**Oil and gas production and
conservation, §15-72-102.**Illegal oil.**Oil and gas production and
conservation, §15-72-102.**Illegal product.**Oil and gas production and
conservation, §15-72-102.**Imminent danger to the health and
safety of the public.**Surface coal mining and reclamation,
§15-58-104.**Impaired or impairment.**County and regional industrial
development companies,
§15-4-1202.**Improvement plan.**Sparta aquifer critical groundwater
counties, §15-22-1203.**Inactive status.**

Quarries, §15-57-402.

Income.Nonprofit incentive act of 2005,
§15-4-3103.**Increased state sales tax liability.**

Tourism development, §15-11-503.

Inducements.

Tourism development, §15-11-503.

Industrial enterprise.Development finance authority,
§15-5-103.**Industry.**

Science and technology, §15-3-101.

Infrastructure needs.Amendment 82 bond financing,
§15-4-3202.**Infrastructure of superproject.**General obligation economic
development superprojects bond
and funding act, §15-4-3003.**In-house research.**

Consolidated incentive act, §15-4-2703.

Initial capitalization.

Science and technology, §15-3-101.

Injection well, §15-76-302.**Intellectual property.**

Consolidated incentive act, §15-4-2703.

Inventors' assistance act, §15-4-1402.

**Interest rate exchange agreement or
similar agreement.**Development finance authority,
§15-5-103.**DEFINED TERMS —Cont'd****Intergovernmental agreement.**Development finance authority,
§15-5-207.**Intermodal facility.**

Consolidated incentive act, §15-4-2703.

Interstate tributary.

Red river compact, §15-23-501.

Intrastate tributary.

Red river compact, §15-23-501.

Inventor.

Inventors' assistance act, §15-4-1402.

Invested.Steel manufacturers tax incentives,
§15-4-2401.**Investment.**Amendment 82 bond financing,
§15-4-3202.

Consolidated incentive act, §15-4-2703.

General obligation economic
development superprojects bond
and funding act, §15-4-3003.**Investment fund.**

Science and technology, §15-3-101.

Investment threshold.

Consolidated incentive act, §15-4-2703.

Investor group.Venture capital investment,
§15-5-1403.**Investors.**Pooled loan securitization act,
§15-20-801.**Invests.**

Consolidated incentive act, §15-4-2703.

Irrigation.Water pollution abatement facilities
bonds, §15-20-1302.**Jobber.**

Liquefied petroleum gases, §15-75-102.

Job-creating research.Arkansas research alliance act,
§15-3-303.**Just and equitable share of brine,**
§15-76-302.**Knowledge-based and
high-technology jobs.**Arkansas research alliance act,
§15-3-303.**Land application.**Poultry feeding operations
registration, §15-20-903.**Lands eligible for remining.**Surface coal mining and reclamation,
§15-58-104.**Lease.**Consolidated incentive act, §15-4-2703.
Science and technology, §15-3-101.

DEFINED TERMS —Cont'd**Letter of commitment.**

Amendment 82 bond financing,
§15-4-3202.

Liquefied petroleum gases,

§15-75-102.

Liquefied petroleum gas systems,

§15-75-102.

Litter.

Poultry feeding operations
registration, §15-20-903.
Soil nutrient application and poultry
litter utilization, §15-20-1103.
Soil nutrient management planners
and applicators certification,
§15-20-1003.

Litter management system.

Poultry feeding operations
registration, §15-20-903.

Livestock.

Soil nutrient application and poultry
litter utilization, §15-20-1103.
Soil nutrient management planners
and applicators certification,
§15-20-1003.

Loan.

Development finance authority,
§15-5-103.
Pooled loan securitization act,
§15-20-801.

Loan limit.

County and regional industrial
development companies,
§15-4-1202.

Local agency.

Rural development program,
§15-6-103.

Local educational agency.

Workforce investment act, §15-4-2203.

Local entity.

Amendment 82 bond financing,
§15-4-3202.

General obligation economic
development superprojects bond
and funding act, §15-4-3003.

Water pollution abatement facilities
bonds, §15-20-1302.

Local financial institutions.

Small business development,
§15-5-703.

Local government.

Water resources cost sharing,
§15-22-803.

Local governmental units.

Rural development program,
§15-6-103.

Lost reserve account.

Small business capital access,
§15-5-1103.

DEFINED TERMS —Cont'd**Manufacturer.**

Liquefied petroleum gases, §15-75-102.

Median household income.

Housing trust fund, §15-5-1703.

Member.

County and regional industrial
development companies,
§15-4-1202.

Metadata.

Geographic information systems board,
§15-21-502.

Mineral.

Mineral lands and interests,
§15-56-301.

Minimum streamflow.

Water resources, §15-22-202.

Minority.

Minority business economic
development, §15-4-303.

Minority business enterprise.

Minority business economic
development, §15-4-303.

Minority business officer.

Minority business economic
development, §15-4-303.

Mitigation bank.

Wetlands mitigation bank act,
§15-22-1003.

Modernization.

Consolidated incentive act, §15-4-2703.
Enterprise zone, §15-4-1702.

Motorboat.

Eleven point river preservation,
§15-23-105.

Municipality.

Public roads improvements tax credit,
§15-4-2303.

Rural development program,
§15-6-103.

National corporate headquarters.

Consolidated incentive act, §15-4-2703.

Nationally recognized rating agency.

Amendment 82 bond financing,
§15-4-3202.

General obligation economic
development superprojects bond
and funding act, §15-4-3003.

Water pollution abatement facilities
bonds, §15-20-1302.

Native gas.

Oil and gas production and
conservation, §15-72-602.

Natural area.

Natural area protection, §15-20-501.

Natural deterioration.

Red river compact, §15-23-501.

DEFINED TERMS —Cont'd**Natural gas.**

Oil and gas production and conservation, §15-72-602.

Natural gas public utility.

Oil and gas production and conservation, §15-72-602.

Natural planning regions.

Regional tourist promotion, §15-11-401.

Natural rivers.

Rivers and creeks, §15-23-303.

Near-equity capital.

Risk capital matching fund, §15-5-1603.

Venture capital investment, §15-5-1403.

Neighborhood organization.

Housing tax credits, §15-5-1302.

Net general revenue.

Amendment 82 bond financing, §15-4-3202.

Net new full-time permanent employee.

Economic development act, §15-4-1902.

Economic development incentive, §15-4-1602.

Enterprise zone, §15-4-1702.

New full-time permanent employee.

Amendment 82 bond financing, §15-4-3202.

Consolidated incentive act, §15-4-2703.

General obligation economic development superprojects bond and funding act, §15-4-3003.

Nonprofit incentive act of 2005, §15-4-3103.

Tourism development, §15-11-503.

New job.

Amendment 82 bond financing, §15-4-3202.

General obligation economic development superprojects bond and funding act, §15-4-3003.

Nonexempt.

Minority business economic development, §15-4-303.

Nonprofit organization.

Nonprofit incentive act of 2005, §15-4-3103.

Nonretail business.

Consolidated incentive act, §15-4-2703.

Notification in process.

Quarries, §15-57-402.

Notification of intent.

Quarries, §15-57-402.

Nutrient.

Soil nutrient application and poultry litter utilization, §15-20-1103.

DEFINED TERMS —Cont'd**Nutrient —Cont'd**

Soil nutrient management planners and applicators certification, §15-20-1003.

Nutrient application.

Soil nutrient application and poultry litter utilization, §15-20-1103.

Soil nutrient management planners and applicators certification, §15-20-1003.

Nutrient applicator.

Soil nutrient management planners and applicators certification, §15-20-1003.

Nutrient management plan.

Soil nutrient application and poultry litter utilization, §15-20-1103.

Soil nutrient management planners and applicators certification, §15-20-1003.

Nutrient surplus area.

Soil nutrient application and poultry litter utilization, §15-20-1103.

Soil nutrient management planners and applicators certification, §15-20-1003.

Office sector business.

Consolidated incentive act, §15-4-2703.

Economic development act, §15-4-1902.

Economic development incentive, §15-4-1602.

Enterprise zone, §15-4-1702.

Oil.

Oil and gas production and conservation, §§15-72-102, 15-72-701.

Open-cut mining, §15-57-303.**Operations.**

Development finance authority, §15-5-103.

Operator.

Nuclear power, §15-10-302.

Oil and gas production and conservation, §§15-72-102, 15-72-201.

Open-cut land reclamation, §15-57-303.

Quarries, §15-57-402.

Surface coal mining and reclamation, §15-58-104.

Ordinary high watermark.

Water resources, §15-22-202.

Other job.

Amendment 82 bond financing, §15-4-3202.

Other needs.

Amendment 82 bond financing, §15-4-3202.

DEFINED TERMS —Cont'd**Other renewable resources.**

Arkansas alternative fuels
development act, §15-13-102.

Outstanding bonded indebtedness.

Amendment 82 bond financing,
§15-4-3202.

Owner.

Brine, §§15-75-406, 15-76-302.
Cave protection, §15-20-602.
Construction assistance revolving loan
fund, §15-5-909.
Oil and gas production and
conservation, §§15-72-102,
15-72-701.
Safe drinking water fund, §15-22-1101.

Participating area.

Oil and gas production and
conservation, §15-72-701.

Pastoral rivers.

Rivers and creeks, §15-23-303.

Payroll.

Consolidated incentive act, §15-4-2703.
Nonprofit incentive act of 2005,
§15-4-3103.

Payroll factor.

Economic development act, §15-4-1902.

Peak.

Open-cut land reclamation,
§15-57-303.

**Permanent or perpetual
relationship.**

Development finance authority,
§15-5-207.

Permit.

Liquefied petroleum gases, §15-75-301.
Surface coal mining and reclamation,
§15-58-104.

Permit action.

Wetlands mitigation bank act,
§15-22-1003.

Permit term.

Open-cut land reclamation,
§15-57-303.

Person.

Brine, §§15-75-406, 15-76-302.
Capital development companies,
§15-4-1002.
Consolidated incentive act, §15-4-2703.
County and regional industrial
development companies,
§15-4-1202.
Development finance corporation,
§15-4-903.
General obligation economic
development superprojects bond
and funding act, §15-4-3003.
Ground water protection, §15-22-903.

DEFINED TERMS —Cont'd**Person —Cont'd**

Inventors' assistance act, §15-4-1402.
Liquefied petroleum gases, §15-75-102.
Measurement and inspection of oil and
gas, §15-74-501.
Oil and gas production and
conservation, §§15-72-102,
15-72-201, 15-72-701.
Open-cut land reclamation,
§15-57-303.
Pollution control, §15-22-702.
Poultry feeding operations
registration, §15-20-903.
Soil nutrient application and poultry
litter utilization, §15-20-1103.
Soil nutrient management planners
and applicators certification,
§15-20-1003.
Sparta aquifer critical groundwater
counties, §15-22-1203.
Surface coal mining and reclamation,
§15-58-104.
Water pollution abatement facilities
bonds, §15-20-1302.
Water resources, §15-22-202.
Water resources development,
§15-22-602.

Petroleum products.

Oil and gas production and
conservation, §15-72-802.

Pit.

Mining and reclamation, §15-57-303.

Pledge.

Pooled loan securitization act,
§15-20-801.

Pledged fees.

Petroleum storage tank trust fund,
§15-5-1203.

Political subdivisions.

Development finance authority,
§15-5-103.
Major industry facilities incentive,
§15-4-1802.
Rural development program,
§15-6-103.

Pollution.

Red river compact, §15-23-501.
River basin compact, §15-23-401.

Pollution abatement.

Natural resources, §15-22-702.
Water pollution abatement facilities
bonds, §15-20-1302.

Pool.

Oil and gas production and
conservation, §§15-72-102,
15-72-701.

DEFINED TERMS —Cont'd**Pool —Cont'd**

Pooled loan securitization act,
§15-20-801.

Port priority improvement program,
§15-23-902.

Postproduction.

Digital product and motion picture
industry development, §15-4-2003.

Postproduction costs.

Digital product and motion picture
industry development, §15-4-2003.

Poultry.

Poultry feeding operations
registration, §15-20-903.

Soil nutrient application and poultry
litter utilization, §15-20-1103.

Poultry feeding operation.

Poultry feeding operations
registration, §15-20-903.

Soil nutrient application and poultry
litter utilization, §15-20-1103.

Poultry litter.

Alternative energy commission,
§15-10-802.

Poultry litter management plan.

Soil nutrient application and poultry
litter utilization, §15-20-1103.

Poultry processor.

Poultry feeding operations
registration, §15-20-903.

Preconstruction costs.

Consolidated incentive act, §15-4-2703.

Pressure maintenance.

Oil and gas production and
conservation, §15-72-501.

Primary recovery.

Oil and gas production and
conservation, §15-72-501.

Prime supplier.

Oil and gas production and
conservation, §15-72-802.

Prior act.

Water pollution abatement facilities
bonds, §15-20-1302.

Private sector advisory committee.

Risk capital matching fund,
§15-5-1603.

Prize logs.

Logging, §15-32-408.

Procurement.

Minority business economic
development, §15-4-303.

Producer.

Brine, §15-76-302.
Oil and gas production and
conservation, §15-72-102.

DEFINED TERMS —Cont'd**Product.**

Inventors' assistance act, §15-4-1402.
Oil and gas production and
conservation, §15-72-102.

Product development plan.

Inventors' assistance act, §15-4-1402.

Production.

Digital product and motion picture
industry development, §15-4-2003.

Production company.

Digital product and motion picture
industry development, §15-4-2003.

Production facilities.

Nuclear power, §15-10-302.
Oil and gas, §15-71-110.

Production process.

Oil and gas, §15-71-110.

Production, processing, and testing equipment.

Steel manufacturers tax incentives,
§15-4-2401.

Program.

Economic development act, §15-4-1902.

Project.

Consolidated incentive act, §15-4-2703.
Development finance authority bonds,
§15-5-403.

Economic development act, §15-4-1902.

Enterprise zone, §15-4-1702.

Nonprofit incentive act of 2005,
§15-4-3103.

Pollution control, §15-22-702.

Public roads improvements tax credit,
§15-4-2303.

Small business development,
§15-5-703.

Tourism development, §15-11-503.

Water pollution abatement facilities
bonds, §15-20-1302.

Water resources development,
§15-22-602.

Project costs.

Amendment 82 bond financing,
§15-4-3202.

General obligation economic
development superprojects bond
and funding act, §15-4-3003.

Pollution control, §15-22-702.

Water pollution abatement facilities
bonds, §15-20-1302.

Water resources development,
§15-22-602.

Project fund.

General obligation economic
development superprojects bond
and funding act, §15-4-3003.

DEFINED TERMS —Cont'd**Project plan.**

Consolidated incentive act, §15-4-2703.
Nonprofit incentive act of 2005,
§15-4-3103.

Property factor.

Economic development act, §15-4-1902.

Property line.

Mining and reclamation, §15-57-315.

Property owner.

Mining and reclamation, §15-57-315.

Proposal.

Inventors' assistance act, §15-4-1402.

Proposed project.

Amendment 82 bond financing,
§15-4-3202.

Proprietary product.

Inventors' assistance act, §15-4-1402.

Protective rate.

Soil nutrient application and poultry
litter utilization, §15-20-1103.

Public roads.

Public roads improvements tax credit,
§15-4-2303.

Purchaser.

Oil and gas production and
conservation, §15-72-802.

Qualified Amendment 82 project.

Amendment 82 bond financing,
§15-4-3202.

Qualified amusement parks.

Tourism, §15-11-511.

Qualified bonds.

Development finance authority bonds,
§15-5-403.

Qualified business.

Consolidated incentive act, §15-4-2703.
Small business capital access,
§15-5-1103.

Qualified community development corporation.

Economic development, §15-4-103.

Qualified housing issues.

Private activity bond allocation,
§15-5-601.

Qualified investment.

Small business development,
§15-5-703.

Qualified loan.

Small business capital access,
§15-5-1103.

Qualified manufacturer of steel.

Steel manufacturers tax incentives,
§15-4-2401.

Qualified medical company.

Science and technology, §15-3-135.

Qualified production costs.

Digital product and motion picture
industry development, §15-4-2003.

DEFINED TERMS —Cont'd**Qualified research expenditures.**

Consolidated incentive act, §15-4-2703.

Qualified security.

Science and technology, §15-3-101.

Quarry, §15-57-402.**Quarry rim, §15-57-402.****Reclamation for productive use.**

Open-cut land reclamation,
§15-57-303.

Reclamation plan.

Quarries, §15-57-402.

Recycling.

Oil and gas production and
conservation, §15-72-501.

Red river.

Natural resources, §15-23-501.

Red river basin.

Natural resources, §15-23-501.

Region.

County and regional industrial
development companies,
§15-4-1202.

Regional corporate headquarters.

Consolidated incentive act, §15-4-2703.

Regional headquarters.

Economic development act, §15-4-1902.
Enterprise zone, §15-4-1702.

Regional tourist promotion agency.

Economic development, §15-11-401.

Regional water district.

Ground water protection, §15-22-903.
Water resources, §15-22-202.

Registered water user.

Sparta aquifer critical groundwater
counties, §15-22-1203.

Related entity.

Amendment 82 bond financing,
§15-4-3202.

Related person.

General obligation economic
development superprojects bond
and funding act, §15-4-3003.

Repressuring.

Oil and gas production and
conservation, §15-72-501.

Research alliance, §15-3-303.**Research and development programs of the Arkansas science and technology authority.**

Consolidated incentive act, §15-4-2703.

Research area of strategic value.

Consolidated incentive act, §15-4-2703.

Research infrastructure.

Arkansas research alliance act,
§15-3-303.

DEFINED TERMS —Cont'd**Research university.**

Arkansas research alliance act,
§15-3-303.

Reserve fund.

Petroleum storage tank trust fund,
§15-5-1203.

Reservoir.

Water resources development,
§15-22-602.

Resident.

Digital product and motion picture
industry development, §15-4-2003.

Revenues.

Sparta aquifer critical groundwater
counties, §15-22-1203.

Review committee.

Risk capital matching fund,
§15-5-1603.

Revolving fund.

Water resources cost sharing,
§15-22-803.

Revolving loan account.

Construction assistance revolving loan
fund, §15-5-909.

Safe drinking water fund, §15-22-1101.

Ridge.

Open-cut land reclamation,
§15-57-303.

Right-of-way.

Open-cut land reclamation,
§15-57-303.

Right-of-way holder.

Mining and reclamation, §15-57-315.

River.

Natural resources, §15-23-303.

Royalties.

Inventors' assistance act, §15-4-1402.

Runoff.

Red river compact, §15-23-501.

Rural area.

Economic development, §15-6-103.

Rural community.

Economic development, §15-6-103.

**Rural development and
revitalization.**

Economic development, §15-6-103.

Safe drinking water act, §15-22-1101.**Sales factor.**

Economic development act, §15-4-1902.

Scenic rivers.

Rivers and creeks, §15-23-303.

**Scientific and technical services
business.**

Consolidated incentive act, §15-4-2703.

Scientific and technological project.

Science and technology, §15-3-101.

DEFINED TERMS —Cont'd**S corporation.**

Affordable neighborhood housing tax
credits, §15-5-1302.

Secondary purchaser.

Timber trust money, §15-32-601.

Secondary recovery.

Oil and gas production and
conservation, §15-72-501.

Sell.

Pooled loan securitization act,
§15-20-801.

Science and technology, §15-3-101.

Set-aside.

Oil and gas production and
conservation, §15-72-802.

Set aside account.

Safe drinking water fund, §15-22-1101.

Short-term advance funding.

Development finance authority,
§15-5-103.

Significant water user.

Sparta aquifer critical groundwater
counties, §15-22-1203.

Single owner.

Hunting and fishing regulations,
§15-43-301.

Sinkhole.

Cave protection, §15-20-602.

Small business.

Economic development, §15-5-703.

Small business development,
§15-5-703.

Small business loan collaboration
program, §15-4-2501.

Small business concern.

Economic development, §15-4-403.

Small business investment company.

Economic development, §§15-4-403,
15-5-703.

Small business loan committee.

Economic development, §15-5-703.

Small-business person.

Economic development, §15-5-703.

Small business development,
§15-5-703.

Small business loan collaboration
program, §15-4-2501.

Small business revolving loan fund.

Economic development, §15-5-703.

Small operator.

Surface coal mining and reclamation,
§15-58-104.

Small tree farmer.

Forestry commission, §15-31-102.

Spatial data.

Geographic information systems board,
§15-21-502.

DEFINED TERMS —Cont'd**Spatial data repository.**

Geographic information systems board,
§15-21-502.

Specialized small investment company.

Economic development, §15-5-703.

Special nuclear material.

Nuclear power, §15-10-302.

Speleothem.

Cave protection, §15-20-602.

Spoil.

Open-cut land reclamation,
§15-57-303.

Quarries, §15-57-402.

Sponsor.

Amendment 82 bond financing,
§15-4-3202.

General obligation economic
development superprojects bond
and funding act, §15-4-3003.

Standard cubic foot of gas.

Measurement and inspection of oil and
gas, §15-74-302.

Start of construction.

Consolidated incentive act, §15-4-2703.

Nonprofit incentive act of 2005,
§15-4-3103.

Start up.

Quarries, §15-57-402.

State.

Development finance authority,
§15-5-103.

Safe drinking water fund, §15-22-1101.

State abandoned mine reclamation program.

Surface coal mining and reclamation,
§15-58-104.

State agency.

Arkansas alternative fuels
development act, §15-13-102.

Development finance authority,
§15-5-103.

Minority business economic
development, §15-4-303.

Rural development program,
§15-6-103.

State and regional mapping.

Geographic information systems board,
§15-21-502.

State apportionment fund.

General obligation economic
development superprojects bond
and funding act, §15-4-3003.

State average hourly wage.

Amendment 82 bond financing,
§15-4-3202.

DEFINED TERMS —Cont'd**State ceiling.**

Private activity bond allocation,
§15-5-601.

State-certified production.

Digital product and motion picture
industry development, §15-4-2003.

State chief technology officer.

Geographic information systems board,
§15-21-502.

State contract.

Minority business economic
development, §15-4-303.

State enterprise architecture.

Geographic information systems board,
§15-21-502.

State geodetic advisor.

Geographic information systems board,
§15-21-502.

State geographic information coordinator.

Geographic information systems board,
§15-21-502.

State grants account.

Construction assistance revolving loan
fund, §15-5-909.

Safe drinking water fund, §15-22-1101.

State income tax.

Major industry facilities incentive,
§15-4-1802.

State investing office.

Water pollution abatement facilities
bonds, §15-20-1302.

State land information coordinator.

Geographic information systems board,
§15-21-502.

State program.

Surface coal mining and reclamation,
§15-58-104.

Strategic research.

Consolidated incentive act, §15-4-2703.

Stream.

Natural resources, §15-23-303.
Water resources, §15-22-202.

Superproject.

General obligation economic
development superprojects bond
and funding act, §15-4-3003.

Supplemental guaranty reserve account.

Development finance authority bonds,
§15-5-403.

Supplier.

Biodiesel incentive act, §15-4-2802.
Oil and gas production and
conservation, §15-72-802.

Support infrastructure.

Consolidated incentive act, §15-4-2703.

DEFINED TERMS —Cont'd

Surface coal mining and reclamation operations,
§15-58-104.

Surface owner.

Oil and gas production and conservation, §15-72-201.

Sustaining aquifer.

Ground water protection, §15-22-903.

Synthetic transportation fuel.

Arkansas alternative fuels development act, §15-13-102.

Targeted businesses.

Consolidated incentive act, §15-4-2703.

Taxpayer.

Public roads improvements tax credit, §15-4-2303.

Technology-based enterprises.

Risk capital matching fund, §15-5-1603.

Technology validation**account-based enterprises.**

Risk capital matching fund, §15-5-1603.

Tender.

Oil and gas production and conservation, §15-72-102.

Third-party right of enforcement.

Conservation easement, §15-20-402.

Tiers.

Consolidated incentive act, §15-4-2703.

Timber purchaser.

Timber trust money, §15-32-601.

Title IX revolving loan funds.

Small business development, §15-5-703.

Topsoil.

Quarries, §15-57-402.

Tourism attraction.

Tourism development, §15-11-503.

Tourism attraction project.

Tourism development, §15-11-503.

Tourism division.

Regional tourist promotion, §15-11-401.

Tourism enterprise.

Development finance authority, §15-5-103.

Transaction enhancement.

Pooled loan securitization act, §15-20-801.

Tributary.

Red river compact, §15-23-501.

Trucking sector business.

Enterprise zone, §15-4-1702.

Trust fund.

Petroleum storage tank trust fund, §15-5-1203.

DEFINED TERMS —Cont'd**Trust fund act.**

Petroleum storage tank trust fund act, §15-5-1203.

2008 housing act volume cap.

Private activity bond allocation, §15-5-601.

Unanticipated event or condition.

Surface coal mining and reclamation, §15-58-104.

Underground storage.

Oil and gas production and conservation, §15-72-602.

Undesignated water.

Red river compact, §15-23-501.

Unit.

Brine, §15-76-302.

Unit of interest.

County and regional industrial development companies, §15-4-1202.

Unwarranted failure to comply.

Surface coal mining and reclamation, §15-58-104.

Urbanized area.

Rural development program, §15-6-103.

User.

Revenue bonds, §15-4-602.

Utilization facility.

Nuclear power, §15-10-302.

Vendor.

Liquefied petroleum gases, §15-75-102.

Venture capital investment trust.

Risk capital matching fund, §15-5-1603.

Waste.

Brine, §15-76-302.

Oil and gas production and conservation, §15-72-102.

Pollution control, §15-22-702.

Water pollution abatement facilities bonds, §15-20-1302.

Water.

Water pollution abatement facilities bonds, §15-20-1302.

Water resources development, §15-22-602.

Water development project.

Water resources, §15-22-501.

Water drive.

Oil and gas production and conservation, §15-72-501.

Water facilities.

Sparta aquifer critical groundwater counties, §15-22-1203.

Water flooding.

Oil and gas production and conservation, §15-72-501.

DEFINED TERMS —Cont'd**Water injection.**

Oil and gas production and conservation, §15-72-501.

Water of the Red river basin.

Natural resources, §15-23-501.

Water resources development project.

Water resources cost sharing, §15-22-803.

Water resources project.

Natural resources, §15-22-602.

Water right.

Ground water protection, §15-22-903.

Waters of the state.

Natural resources.

Hunting and fishing regulations, §15-43-301.

Water systems.

Safe drinking water fund, §15-22-1101.

Water within state.

Poultry feeding operations registration, §15-20-903.

Soil nutrient application and poultry litter utilization, §15-20-1103.

Soil nutrient management planners and applicators certification, §15-20-1003.

Water year.

Ground water protection, §15-22-903.

River basin compact, §15-23-401.

Well.

Ground water protection, §15-22-903.

Wetlands technical advisory committee, §15-22-1003.**Wildlife observation trails, §15-11-703.****DEPOSITS.****Development finance corporations.**

Corporate funds, §15-4-926.

Receipt of money on deposit not authorized, §15-4-926.

Geological survey.

Moneys deposited into state treasury, §15-55-212.

DEVELOPMENT.**Water resources development, §§15-22-601 to 15-22-622.****DEVELOPMENT FINANCE AUTHORITY.****Accounts and accounting.**

Correction facilities privatization account, §15-5-213.

Agriculture.

Catfish industry development program, §15-5-805.

DEVELOPMENT FINANCE**AUTHORITY —Cont'd****Agriculture —Cont'd**

Division of agriculture development.

Advisory capacity, §15-5-804.

Creation, §15-5-802.

Duties, §15-5-803.

Functions, §15-5-803.

Staff, §15-5-802.

Rural development generally, §15-5-801.

Amendment 82 bond financing.

General provisions, §§15-4-3201 to 15-4-3224.

Powers and duties, §15-4-3223.

Audits.

Annual audit, §15-5-210.

Board of directors.

Compensation, §15-5-202.

Composition, §15-5-202.

Expenses, §15-5-202.

Meetings, §15-5-205.

Officers, §15-5-203.

Qualifications, §15-5-202.

Quorum, §15-5-205.

Removal of members, §15-5-202.

Staff.

Appointment, §15-5-203.

Terms of office, §15-5-202.

Vacancies in office.

Filling, §15-5-202.

Bond issues.

Authority to use money committed to other projects, §15-5-414.

Brownfield revolving loan fund.

Use of fund as security for, §15-5-1508.

Exclusive issuer of revenue bonds for public facilities, §15-5-303.

Execution, §15-5-311.

Experts, §15-5-302.

General obligation economic development superproject bond and project funding act, §§15-4-3001 to 15-4-3023.

Guaranty.

Agreements.

Guaranty agreement provisions, §15-5-412.

Amount of qualified bonds guaranteed at any time, §15-5-405.

Citation of subchapter, §15-5-401.

Declaration of public necessity, §15-5-402.

Definitions, §15-5-403.

Denial, §15-5-404.

DEVELOPMENT FINANCE**AUTHORITY —Cont'd****Bond issues —Cont'd****Guaranty —Cont'd**

Development finance guaranty bonds, §§15-5-401 to 15-5-422.

Evidence to support guaranty required, §15-5-408.

Legislative findings, §15-5-402.

No private right of action against authority, §15-5-410.

Power to grant or deny, §15-5-404.

Regulations, §15-5-406.

Promulgation, §15-5-413.

Remedies, §15-5-413.

Revenue bond guaranty reserve account.

Establishment, §15-5-407.

Grants to account, §15-5-411.

Investment of funds, §15-5-407.

Prepayment, §15-5-408.

Review of applications, §15-5-409.

Standards and regulations for evaluations, §15-5-406.

Title of subchapter, §15-5-401.

When bonds may be guaranteed, §15-5-405.

Interest rate exchange agreement or similar agreement.

Authority to enter into, §15-5-317.

Defined, §15-5-103.

Investments.

Authorized investments, §15-5-305.

Issuance.

Authority to issue, §15-5-301.

Disapproval, §15-5-308.

Exclusive issuer of mortgage bonds, §15-5-304.

Notice, §15-5-308.

Disapproval, §15-5-308.

Power to issue bonds, §§15-5-207, 15-5-301.

Request to issue certain bonds, §15-5-307.

Liabilities.

No personal liability, §15-5-316.

Liens.

Pledge, §15-5-313.

Money committed to other projects.

Amount of debt service, §15-5-421.

Authority to use, §15-5-414.

Execution, §15-5-418.

Insurance.

Purpose, §15-5-415.

Proceeds, §15-5-420.

Reserve sources for payment, §15-5-420.

Resolutions authorizing, §15-5-416.

DEVELOPMENT FINANCE**AUTHORITY —Cont'd****Bond issues —Cont'd**

Money committed to other projects —Cont'd

Sales, §15-5-419.

Trust indentures, §15-5-417.

Mortgage bonds.

Exclusive issuer, §15-5-304.

Pledge valid and binding, §15-5-313.

Qualities of bonds, §15-5-309.

Refunding bonds, §15-5-314.

Residential community development, §15-5-106.

Resolution.

Authorizing resolution for bonds, §15-5-309.

Sale, §15-5-310.

Securing deposit of public funds, §15-5-315.

State bond indebtedness, §15-5-312.

Statement on face of bond.

State not indebted, §15-5-312.

Taxation.

Exemption from taxes, §15-5-306.

Terms of bonds, §15-5-309.

Trust indenture.

Resolution may provide for, §15-5-309.

Underwriters, §15-5-302.

Brownfield revolving loan fund,

§§15-5-1501 to 15-5-1511.

Catfish industry development program,

§15-5-805.

Citation of law,

§15-5-101.

Conflicts of interest.

Contracts, §15-5-204.

Construction of law,

§15-5-104.

Contracts.

Conflicts of interest, §15-5-204.

Correction facilities construction fund,

§§15-5-213, 15-5-422.

Creation,

§15-5-201.

Criminal background checks,

§15-5-214.

Declaration of public necessity,

§15-5-102.

Definitions,

§15-5-103.

Bond issues.

Guaranty, §15-5-403.

Dissolution.

Disposition of property, funds and assets, §15-5-211.

Procedure, §15-5-211.

Duties.

Generally, §15-5-207.

Funds.

Correction facilities construction fund, §§15-5-213, 15-5-422.

DEVELOPMENT FINANCE**AUTHORITY —Cont'd****Funds —Cont'd**

Disposition and use of funds,
§15-5-209.

**General obligation economic
development superproject bond
and project funding act,**
§§15-4-3001 to 15-4-3023.

Intergovernmental agreements,
§15-5-207.

Investments.

Bond issues.

Authorized investors, §15-5-305.

Issuance of bonds, §15-5-106.

Legislative councils.

Approval of legislative council for
certain matters, §15-5-212.

Legislative findings, §15-5-102.

Powers.

Generally, §§15-5-201, 15-5-207.

Transfer of powers to authority,
§15-5-303.

Reports.

Annual report, §15-5-210.

Rural development.

Coordinator with other state agencies,
§15-5-801.

Services of public entities.

Authorized, §15-5-208.

Expenses, §15-5-208.

Small businesses.

Development finance authority small
business act, §§15-5-701 to
15-5-713.

Subchapter supplemental, §15-5-105.

Supplemental nature of act,
§15-5-105.

Taxation.

Bond issues.

Exempt from taxes, §15-5-306.

Title of law, §15-5-101.

Transfer of powers to authority,
§15-5-303.

**DEVELOPMENT FINANCE
CORPORATIONS.**

Amendments.

Articles of incorporation, §15-4-914.

Articles of incorporation.

Amendments, §15-4-914.

Contents, §15-4-906.

Requirements, §15-4-906.

Bond issues.

Exemption from Arkansas securities
act, §15-4-920.

Investments.

Eligibility for certain investments,
§15-4-924.

DEVELOPMENT FINANCE**CORPORATIONS —Cont'd****Bond issues —Cont'd**

Issuance authorized, §15-4-923.

Obligations as negotiable instruments,
§15-4-921.

Taxation.

Exemption of interest and
obligations from certain taxes,
§15-4-925.

Capital development companies,
§§15-4-1001 to 15-4-1031.

Certificates of organization.

Commencement of corporate existence,
§15-4-913.

Contents, §15-4-911.

Citation of subchapter, §15-4-901.

Construction and interpretation.

Liberal construction of subchapter,
§15-4-904.

Debentures.

Exemption of provisions from
Arkansas securities act, §15-4-920.

Issuance, §15-4-922.

Obligations as negotiable instruments,
§15-4-921.

Taxation.

Exemption of interest and
obligations from certain taxes,
§15-4-925.

Definitions, §15-4-903.

Deposits.

Corporate funds, §15-4-926.

Receipt of money on deposit not
authorized, §15-4-926.

Directors.

Liability, §15-4-918.

Dissolution.

Grounds, §15-4-927.

Procedure, §15-4-927.

Establishment.

Applications, §15-4-907.

Commencement of corporate existence,
§15-4-913.

Preliminary approval, §15-4-909.

Preliminary investigation, §15-4-908.

Fees.

Supervision, §15-4-905.

Intent of legislature.

Purposes of development finance
corporations, §15-4-902.

Interest.

Bond issues.

Exemption of interest and
obligations from certain taxes,
§15-4-925.

Investigations.

Final investigation and approval by
board, §15-4-912.

DEVELOPMENT FINANCE**CORPORATIONS —Cont'd****Investigations —Cont'd**

Preliminary investigation, §15-4-908.

Investments.

Eligibility for certain investments,
§15-4-924.

Liberal construction of provisions,
§15-4-904.

Loans.

Policies generally, §15-4-926.

Management of corporations,
§15-4-915.

Negotiable instruments.

Bond issues and debentures of
corporations.

Obligations as negotiable
instruments, §15-4-921.

Nonprofit corporations.

Corporation to be nonprofit, §15-4-917.

Officers.

Liability, §15-4-918.

Organization.

Certificate of organization, §15-4-911.

Commencement of corporate existence,
§15-4-913.

Final investigation and approval by
board, §15-4-912.

Procedure, §15-4-910.

Powers.

Generally, §15-4-916.

Purposes, §15-4-902.**Revenues.**

Use, §15-4-917.

Stock and stockholders.

Common stock.

Voting and transfer, §15-4-915.

Preferred stock.

Retirement, §15-4-919.

Retirement of preferred stock,
§15-4-919.

Voting and transfer of common stock,
§15-4-915.

Supervision.

Fees, §15-4-905.

Generally, §15-4-905.

Surplus.

Use of earned surplus, §15-4-923.

Taxation.

Bond issues.

Exemption of interest and
obligations from certain taxes,
§15-4-925.

Title of subchapter, §15-4-901.

DIESEL FUEL.

**Biodiesel incentive act, §§15-4-2801 to
15-4-2805.**

**DIGITAL PRODUCT AND MOTION
PICTURE INDUSTRY**

**DEVELOPMENT, §§15-4-2001 to
15-4-2011.**

DISSOLUTION.

Capital development companies,
§15-4-1029.

Development finance corporations,
§15-4-927.

**Industrial development
corporations, §15-4-525.**

DIVIDENDS.

Capital development companies,
§15-4-1017.

**County and regional industrial
development companies,**
§15-4-1215.

DOCUMENTS.**Oil and gas commission.**

Summons and process.

Production of documents,
§15-71-112.

Failure to produce documents,
§15-71-112.

DOES.**Elections.**

Local option to determine doe killing
area, §15-43-204.

Hunting regulations.

Local option to determine doe killing
area, §15-43-204.

Ballots, §15-43-204.

Effect of election results, §15-43-204.

Petition for election, §15-43-204.

DOGS.**Running at large.**

Enforcement of regulation against
dogs running at large.

Penalty for enforcement, §15-41-113.

DOMESTIC ALLOTMENT.

**Soil conservation and domestic
allotment, §§15-21-401 to
15-21-407.**

DOWER AND CURTESY.**Oil and gas.**

Partition of oil and gas lease interests.

Effect of sale or lease, §15-73-408.

DRAINAGE.**Bonds to finance systems.**

Water resources bonds generally,
§§15-22-1301 to 15-22-1313.

DRAINAGE DISTRICTS.**Flood control.**

Rights of districts unaffected,
§15-24-104.

DRINKING WATER.

Safe drinking water fund,
§§15-22-1101 to 15-22-1112.

DRUGS AND CONTROLLED SUBSTANCES.**Hunting accidents.**

Implied consent to chemical test,
§15-42-127.

DRUG TESTING.**Hunting accidents.**

Implied consent to drug test,
§15-42-127.

DUCKS.**Hunting licenses.**

State duck stamp, §15-42-104.

E**EARTHQUAKES.****Seismological observatory.**

Duties, §15-21-602.
Establishment, §15-21-602.
Legislative intent, §15-21-601.
Seismic network for monitoring
earthquake activity, §15-21-603.

EASEMENTS.

Conservation easements, §§15-20-401
to 15-20-410.

ECONOMIC AND COMMUNITY DEVELOPMENT.

Alternative energy commission,
§§15-10-801, 15-10-802.

**Arkansas Amendment 82
implementation act,** §§15-4-3201
to 15-4-3224.

**Arkansas housing trust fund act of
2009,** §§15-5-1701 to 15-5-1709.

**Arkansas port priority improvement
program,** §§15-23-901 to 15-23-906.

Arkansas research alliance act,
§§15-3-301 to 15-3-306.

Citation of act, §15-3-301.

Contracting with research alliance,
§15-3-306.

Definitions, §15-3-303.

Public policy, §15-3-302.

Science and technology authority.

Areas of collaboration, §15-3-304.

Collaboration with universities and
business communities,
§§15-3-304, 15-3-305.

Arkansas research matching fund,
§§15-3-201 to 15-3-208.

**Audit of economic incentive
programs,** §15-4-220.

ECONOMIC AND COMMUNITY DEVELOPMENT —Cont'd

Biodiesel incentive act, §§15-4-2801 to
15-4-2805.

**Capital access program for small
businesses,** §§15-5-1101 to
15-5-1110.

**Catfish industry development
program,** §15-5-805.

Citation of act.

Short title, §15-4-101.

Commission.

Cooperation with other states and
federal government, §15-4-208.

Director, §15-4-206.

Duties, §15-4-205.

Powers and duties, §15-4-209.

Tax exemptions to industries,
§15-4-207.

Community development corporations.

Bond guaranty for employee stock
purchases, §15-4-104.

Registration, §15-4-103.

Consolidated incentive act of 2003,
§§15-4-2701 to 15-4-2714.

Construction and interpretation.

Liberal construction of provisions,
§15-4-102.

County and regional industrial
development companies,
§15-4-1203.

Council.

Annual report, §15-4-219.

Conduct of business, §15-4-203.

Creation, §15-4-201.

Industrial access program, §15-4-218.

Interagency contracts, §15-4-214.

Members, §15-4-202.

Overseas operation, §§15-4-210,
15-4-211.

Powers and duties, §15-4-204.

Rural development, §15-4-213.

Sale of property, §15-4-212.

**County and regional industrial
development companies,**
§§15-4-1201 to 15-4-1228.

Articles of incorporation.

Amendment, §15-4-1212.

Approval.

Final investigation and approval,
§15-4-1209.

Preliminary approval,
§§15-4-1204, 15-4-1205.

Contents, §15-4-1211.

Filing, §15-4-1210.

Articles of organization.

Amendment, §15-4-1212.

**ECONOMIC AND COMMUNITY
DEVELOPMENT —Cont'd**

**County and regional industrial
development companies —Cont'd**

Articles of organization —Cont'd

Approval.

Final investigation and approval,
§15-4-1209.

Preliminary approval,
§§15-4-1204, 15-4-1205.

Contents, §15-4-1211.

Filing, §15-4-1210.

Authority of other corporations and
financial institutions, §15-4-1217.

Bonds and notes, §15-4-1216.

Eligibility for certain investments,
§15-4-1222.

Exemption for securities,
§15-4-1220.

Negotiable instruments.

Obligations as, §15-4-1221.

Tax exemptions, §15-4-1223.

Bylaws.

Approval, §15-4-1209.

Certificate of organization, §15-4-1208.

Effect of issuance, §15-4-1210.

Evidentiary effect, §15-4-1210.

Citation of act, §15-4-1201.

Definitions, §15-4-1202.

Dissolution, §15-4-1227.

Dividends and distributions,
§15-4-1215.

Fees.

Establishment and continuation of
existence and good standing,
§15-4-1210.

Financial institutions.

Membership in company,
§§15-4-1217 to 15-4-1219.

Immunities.

Directors, officers, managers and
members, §15-4-1207.

Injunctions, §15-4-1228.

Interpretation and construction.

Liberal construction of provisions,
§15-4-1203.

Investigations, §15-4-1228.

Loans.

Member financial institutions,
§15-4-1218.

Loan limits, §15-4-1218.

Policy, §15-4-1225.

Management, §15-4-1213.

Organization, §15-4-1206.

Certificate of organization,
§15-4-1208.

Powers, §15-4-1214.

Supervision, §15-4-1226.

**ECONOMIC AND COMMUNITY
DEVELOPMENT —Cont'd**

**County and regional industrial
development companies —Cont'd**

Tax credit, §15-4-1224.

Tax exemptions, §15-4-1223.

Title of act, §15-4-1201.

Withdrawal of members, §15-4-1219.

**Digital product and motion picture
industry development,**

§§15-4-2001 to 15-4-2011.

Application for rebate, §15-4-2007.

Certificate of rebate, §15-4-2007.

Definitions, §15-4-2003.

Disbursement of rebates, §15-4-2008.

Expiration of opportunity, §15-4-2011.

Failure to register, §15-4-2009.

Financial incentive agreement,
§15-4-2007.

Legislative purpose, §15-4-2002.

Penalties for noncompliance with
provisions, §15-4-2009.

Post-production rebate, §15-4-2006.

Production rebate, §15-4-2005.

Registration of production company,
§15-4-2004.

Rules promulgation, §15-4-2010.

Sunset provision, §15-4-2011.

Title of provisions, §15-4-2001.

Economic development act of 1995,
§§15-4-1901 to 15-4-1908.

Benefits.

Qualifications, §15-4-1904.

Citation of act, §15-4-1901.

Definitions, §15-4-1902.

Economic development commission.

Powers and duties, §15-4-1903.

Effect of participation, §15-4-1908.

Financial incentive plan, §15-4-1905.

Verification, §15-4-1907.

Income tax credit, §15-4-1906.

Participation in program.

Effect on other tax incentive
programs, §15-4-1908.

Plan.

Financial incentive plan, §15-4-1905.

Powers and duties.

Economic development commission,
§15-4-1903.

Qualifications, §15-4-1904.

Refund of sales and use tax,
§15-4-1906.

Rules and regulations, §15-4-1907.

Sales and use tax.

Refund, §15-4-1906.

Taxation.

Effect of participation on other tax
incentive programs, §15-4-1908.

ECONOMIC AND COMMUNITY DEVELOPMENT —Cont'd

Economic development act of 1995 —Cont'd

Taxation —Cont'd

Income tax credit, §15-4-1906.

Refund of sales and use tax, §15-4-1906.

Title of act, §15-4-1901.

Verification, §15-4-1907.

Economic development general obligation superprojects bond and project funding act, §§15-4-3001 to 15-4-3023.

Economic development incentive, §§15-4-1601 to 15-4-1609.

Enterprise zone act, §§15-4-1701 to 15-4-1709.

Equity investment incentives, §§15-4-3301 to 15-4-3306.

Application for tax credit, §15-4-3304.

Award of tax credit, §15-4-3305.

Creation of tax credits, §15-4-3302.

Eligibility for tax credit, §15-4-3303.

Purpose, §15-4-3302.

Rulemaking authority, §15-4-3306.

Tax credits, §§15-4-3302 to 15-4-3305.

Title of act, §15-4-3301.

General obligation economic development superproject bond and project funding act, §§15-4-3001 to 15-4-3023.

Housing trust fund act of 2009, §§15-5-1701 to 15-5-1709.

Industrial access program, §15-4-218.

Industrial revenue bond guaranty law, §§15-4-601 to 15-4-609.

Inventions.

Assistance to inventors, §§15-4-1401 to 15-4-1408.

Knowledge-based job growth.

Postdoctoral science and engineering grant program for economic development and knowledge-based job growth, §§15-3-401 to 15-3-405.

Major industries facilities incentive, §§15-4-1801 to 15-4-1811.

Minority business economic development, §§15-4-301 to 15-4-314.

Accelerated payments to businesses, §15-4-313.

Administration of provisions, §15-4-308.

Advisory council, §15-4-307.

Annual minority purchasing plan, §15-4-311.

ECONOMIC AND COMMUNITY DEVELOPMENT —Cont'd

Minority business economic development —Cont'd

Certification process, §15-4-314.

Contracts to be exempted, §15-4-309.

Definitions, §15-4-303.

Division of minority business enterprise.

Administrator, §15-4-305.

Advisory council, §15-4-307.

Created, §15-4-304.

Duties, §15-4-306.

Minority business officer, §15-4-310.

Purchasing plan, §15-4-311.

Purpose of provisions, §15-4-302.

State agency reports, §15-4-312.

Title of act, §15-4-301.

Nonprofit incentive act of 2005, §§15-4-3101 to 15-4-3107.

Definitions, §15-4-3103.

Economic development incentive fund, §15-4-3106.

Eligibility, §15-4-3104.

Payroll rebate, §15-4-3106.

Public policy, §15-4-3102.

Qualification for benefits, §15-4-3104.

Sales and use tax refund, §§15-4-3104, 15-4-3105, 15-4-3107.

Title of act, §15-4-3101.

Notice.

Corporations for promotion.

First meetings of incorporators, §15-4-507.

Port priority improvement program, §§15-23-901 to 15-23-906.

Postdoctoral science and engineering grant program for economic development and knowledge-based job growth, §§15-3-401 to 15-3-405.

Applications, §15-3-402.

Classification and authorization for grants, §15-3-404.

Legislative intent, §15-3-401.

Qualification for grant, §15-3-403.

Rules promulgation, §15-3-405.

Public roads improvements tax credit, §§15-4-2301 to 15-4-2307.

Registration of community development corporations, §15-4-103.

Reports.

Council.

Annual report, §15-4-219.

Research alliance act, §§15-3-301 to 15-3-306.

ECONOMIC AND COMMUNITY DEVELOPMENT —Cont'd

Research matching fund, §§15-3-201 to 15-3-208.

Risk capital matching fund, §§15-5-1601 to 15-5-1609.

Annual report, §15-5-1608.

Creation, §15-5-1604.

Definitions, §15-5-1603.

Enterprise development account.

Allocation of funds, §15-5-1605.

Defined, §15-5-1603.

Legislative intent, §15-5-1602.

Private sector advisory committee, §15-5-1606.

Defined, §15-5-1603.

Purpose, §15-5-1604.

Review committee, §15-5-1607.

Technology validation account.

Allocation of funds, §15-5-1605.

Defined, §15-5-1603.

Title of act, §15-5-1601.

Use of funds, §15-5-1605.

Venture capital investment trust.

Allocation of funds, §15-5-1605.

Defined, §15-5-1603.

Powers of the trustees, §15-5-1609.

Small businesses.

Small business loan collaboration program, §§15-4-2501 to 15-4-2506.

Stimulating small business growth, §§15-4-401 to 15-4-416.

Steel manufacturers tax incentives, §§15-4-2401 to 15-4-2407.

Taxation.

Corporations for promotion.

Bond issues.

Tax exemption, §15-4-524.

County and regional industrial development companies.

Exemptions, §15-4-1223.

Tax credit, §15-4-1224.

Tax incentives for economic development, §§15-5-1101 to 15-5-1110.

Title of act.

Short title, §15-4-101.

Venture capital investment, §§15-5-1401 to 15-5-1409.

Workforce investment board and adult education study committee, §§15-4-2901, 15-4-2902.

ECONOMIC DEVELOPMENT GENERAL OBLIGATION SUPERPROJECTS BOND AND PROJECT FUNDING ACT, §§15-4-3001 to 15-4-3023.

ECONOMIC DEVELOPMENT INCENTIVE, §§15-4-1601 to 15-4-1609.

Benefits.

Qualifications for, §15-4-1605.

Citation of act, §15-4-1601.

Compliance with incentive plans.

Verification, §15-4-1608.

Definitions, §15-4-1602.

Development incentive fund, §15-4-1603.

Economic development commission.

Powers and duties, §15-4-1604.

Effect of participation, §15-4-1609.

Equity investment incentives, §§15-4-3301 to 15-4-3306.

Funds.

Economic development incentive fund, §15-4-1603.

Transfer of funds, §15-4-1607.

Limitations, §15-4-1606.

Nonprofit investment act of 2005, §§15-4-3101 to 15-4-3107.

Participation.

Effect of, §15-4-1609.

Plan limitations, §15-4-1606.

Powers and duties of commission, §15-4-1604.

Qualifications, §15-4-1605.

Rules and regulations, §15-4-1608.

Short title, §15-4-1601.

Transfer of funds, §15-4-1607.

Verification, §15-4-1608.

ECONOMIC DEVELOPMENT INCENTIVE FUND, §15-4-1603.

Consolidated incentive act, §15-4-2707.

ECONOMIC DEVELOPMENT SUPERPROJECTS.

Bonds to fund, §§15-4-3001 to 15-4-3023.

Actions involving validity of subchapter or bonds issued.

Preferred cause, §15-4-3022.

Authorization to issue.

Development finance authority, §15-4-3004.

Construction of subchapter, §15-4-3023.

Contract between state and bondholders, §15-4-3018.

Definitions, §15-4-3003.

Delivery of bonds and coupons, §15-4-3010.

Deposit of proceeds, §15-4-3012.

Determination of money required for repayment, §15-4-3015.

ECONOMIC DEVELOPMENT SUPERPROJECTS —Cont'd

Bonds to fund —Cont'd

- Diversion of pledged revenues.
- Courts to prevent, §15-4-3018.
- Economic development superprojects project fund.
- Deposit of sale proceeds, §15-4-3012.
- Payment of bonds from, §15-4-3014.
- Election by qualified voter of state.
- Consent to issuance, §§15-4-3020, 15-4-3021.
- Exemption from taxes, §15-4-3016.
- Financing superproject.
- Purpose for which issued, §15-4-3008.
- Form, §15-4-3010.
- General obligations of state, §15-4-3014.
- Governor's proclamation authorizing authority to proceed, §15-4-3005.
- Interest, §15-4-3007.
- Investment and job creation requirements.
- Qualification as superproject, §15-4-3006.
- Investment of proceeds, §15-4-3012.
- Legislative findings, §15-4-3002.
- Outstanding bonds of state.
- Subchapter not to impair or affect, §15-4-3019.
- Payment of bonds from, §15-4-3014.
- Determination of money required for repayment, §15-4-3015.
- Performance of covenants and obligations.
- Right of holders to compel, §15-4-3018.
- Plan.
- Submission before issuance, §15-4-3005.
- Powers of economic development commission, §15-4-3013.
- Price, §15-4-3011.
- Proceeds.
- Deposit, §15-4-3012.
- Uses allowed, §15-4-3008.
- Sale of bonds, §15-4-3011.
- Purposes, §15-4-3002.
- Construction of subchapter to accomplish, §15-4-3023.
- Powers of economic development commission, §15-4-3013.
- Qualification as superproject, §15-4-3006.
- Refunding bonds, §15-4-3017.
- Refusal by governor to give approval.
- Notice to authority, §15-4-3005.

ECONOMIC DEVELOPMENT SUPERPROJECTS —Cont'd

Bonds to fund —Cont'd

- Repurchase agreements, §15-4-3012.
- Resolution of development finance authority.
- Authorization by, §15-4-3009.
- Rights under subchapter.
- Arise on issuance of first series, §15-4-3019.
- Sale, §15-4-3011.
- Refunding bonds, §15-4-3017.
- Series, issuance in, §15-4-3007.
- Signatures required, §15-4-3010.
- State of Arkansas economic development general obligation bonds.
- Bonds known as, §15-4-3005.
- Superproject defined, §15-4-3003.
- Tax exemption, §15-4-3016.
- Temporary notes.
- Issuance pending issuance of bonds, §15-4-3007.
- Title of act, §15-4-3001.
- Total principal amount to be issued, §15-4-3005.
- Trust indenture.
- Resolution of authority providing for, §15-4-3009.
- Utilization of funding to attract superprojects.
- Economic development commission, §15-4-3004.

ELECTIONS.

Bond issues.

- Economic development superprojects bonds.
- Consent to issuance, §§15-4-3020, 15-4-3021.

Deer.

- Does.
- Local option to determine doe killing area, §15-43-204.

Hunting.

- Doe killing area.
- Local option to determine area, §15-43-204.
- Ballots, §15-43-204.
- Effect of election results, §15-43-204.

Special elections.

- Doe killing area, election to redetermine, §15-43-204.

Water pollution abatement facilities bonds.

- Effect of election, §15-20-1319.
- Special election for issuance, §15-20-1318.

ELEEMOSYNARY INSTITUTIONS.**Leases.**

Oil, gas and mineral interests,
§15-73-202.

Oil and gas.

Lease of oil, gas and mining interests,
§15-73-202.

ELEVEN POINT RIVER.

Designation as a scenic river,
§15-23-105.

Motorboats prohibited, §15-23-105.

EMERGENCIES.**Liquefied petroleum gas.**

Filling of container of another's
company during emergency,
§15-75-406.

Shortage emergencies, §15-75-322.

EMINENT DOMAIN.**Flood control.**

Power of natural resources
commission, §§15-24-102,
15-24-107.

Mines and minerals.

Short line railroads, §15-56-502.

Oil and gas.

Gasoline, fuel, illuminating and
heating oil.

Condemnation of gasoline by
inspectors, §15-74-405.

Placards attached to gasoline
pumps, §15-74-405.

Misdemeanor for removing or
altering, §15-74-406.

Prosecution for violations,
§15-74-405.

Rivers.

Natural and scenic rivers system.
Commission not to have power of
eminent domain, §15-23-309.

**Surface coal mining and
reclamation,** §15-58-406.

EMPLOYMENT RELATIONS.

Financial incentive plan, §§15-4-1601
to 15-4-1609.

ENDORSEMENTS.**Oil and gas.**

Lease of oil, gas and mineral interests.
Forfeiture of leases.

Failure to pay rental installment.
Endorsement of forfeiture by
landowner, §15-73-205.

ENERGY.

Alternative energy commission,
§§15-10-801, 15-10-802.

Appropriations.

Southern states energy compact,
§15-10-403.

ENERGY —Cont'd**Energy office.**

Composition, §15-10-203.

Creation, §15-10-203.

Director, §15-10-204.

Duties. .

Generally, §15-10-205.

Powers and duties, §15-10-205.

State departments and agencies.

Cooperation and coordination with
energy office, §15-10-206.

Governor.

Southern states energy compact.

Board.

Ex officio member of board,
§15-10-402.

Reorganization and policy act.

Citation of act.

Short title, §15-10-201.

Legislative declaration, §15-10-202.

Public policy.

Declaration, §15-10-202.

Title of act.

Short title, §15-10-201.

Southern states energy compact.

Advisory committees, §15-10-401.

Appropriations, §15-10-403.

Board, §15-10-401.

Cooperation with board by officers,
departments, agencies and
institutions, §15-10-404.

Governor as ex officio member,
§15-10-402.

Powers, §15-10-401.

Enactment into law, §15-10-401.

General provisions, §15-10-401.

Governor.

Ex officio member of board,
§15-10-402.

State departments and agencies.

Cooperation with boards,
§15-10-404.

Supplementary agreements,
§15-10-403.

Text, §15-10-401.

State departments and agencies.

Energy office.

Cooperation and coordination with
office, §15-10-206.

ENTERPRISE ZONES, §§15-4-1701 to
15-4-1705.

Citation of acts, §15-4-1701.

Definitions, §15-4-1702.

Economic development commission.

Duties.

Generally, §15-4-1703.

Powers.

Generally, §15-4-1703.

ENTERPRISE ZONES —Cont'd**Exceptions**, §15-4-1709.**Manufacturer's investment sales and use tax credit.**

Projects under, §15-4-1705.

Taxation.

Sales and use tax.

Projects under manufacturer's sales and use tax credit act,
§15-4-1705.**Title of acts**, §15-4-1701.**ENVIRONMENTAL IMPACT STATEMENTS.****Timber cut on lands belonging to game and fish commission.**

Required environmental impact statement, §15-41-108.

ENVIRONMENTAL PROTECTION.**Brownfield revolving loan fund**, §§15-5-1501 to 15-5-1511.**Citation of act.**

Short title, §15-20-301.

Construction assistance revolving loan fund, §§15-5-901 to 15-5-910.**Dedication of property.**

Articles of dedication, §15-20-312.

Categories of property in natural areas system, §15-20-310.

Changes in property interests created by dedication, §15-20-314.

Exemptions from provisions,
§15-20-316.

Defined, §15-20-312.

General provisions, §15-20-312.

Hearings.Changes in property interests created by dedication,
§15-20-314.

Natural heritage commission.

Categories of property in natural areas system, §15-20-310.

Local significance.

Designation of areas of local significance, §15-20-313.

Notice.Hearing on changes in property interests created by dedication,
§15-20-314.

Powers of natural heritage commission generally, §15-20-308.

Environmental impact statements.

Timber cut on lands belonging to game and fish commission.

Required environmental impact statement, §15-41-108.

ENVIRONMENTAL PROTECTION

—Cont'd

Gifts.

Natural heritage commission.

Power to receive gifts, §§15-20-309,
15-20-318.**Hearings.**

Dedication of property.

Changes in property interests created by dedication,
§15-20-314.**Legislative declaration**, §15-20-302.**Natural areas system.**

Category of property in natural areas system, §15-20-310.

Local significance.

Designation of areas of local significance, §15-20-313.

Natural heritage commission.

Acquisition of land, §15-20-308.

Gifts and grants, §§15-20-309,
15-20-318.Limitation on purchase of land,
§15-20-311.Purpose of trade or exchange,
§15-20-309.

Use of property, §15-20-309.

Appointment, §15-20-305.

Compensation, §15-20-305.

Composition, §15-20-305.

Dedication of property.

Categories of property in natural areas system, §15-20-310.

Local significance.

Designation of areas of local significance, §15-20-313.

Duties, §15-20-308.

Established, §15-20-304.

Gifts and grants.

Power to receive, §15-20-309.

Use of funds, §15-20-308.

Officers, §15-20-306.

Powers, §15-20-308.

Qualifications of members, §15-20-305.

Quorum, §15-20-306.

Registry of natural areas, §15-20-308.

Reports.

Annual report, §15-20-308.

Research.

Fees, §15-20-317.

Deposit of moneys, §15-20-319.

Terms of office, §15-20-305.

Notice.

Dedication of property.

Hearing on changes in property interest created by dedication,
§15-20-314.**Policy of state**, §15-20-302.

ENVIRONMENTAL PROTECTION

—Cont'd

Poultry feeding operations.

Litter management.

Registration with natural resources
commission, §§15-20-901 to
15-20-906.**Public utilities.**Exemptions from certain provisions,
§15-20-316.**Railroads.**Exemptions from certain provisions,
§15-20-316.**Real property.**

Natural heritage commission.

Acquisition of land, §§15-20-308,
15-20-311.Restrictions on alienation or
encumbrance of lands in natural
areas system.

Exemptions, §§15-20-315, 15-20-316.

Generally, §15-20-315.

Registry of natural areas.Powers and duties of natural heritage
commission, §15-20-308.**Reports.**

Natural heritage commission.

Annual report, §15-20-308.

Research.

Natural heritage commission.

Fees for research services,
§15-20-317.

Deposit of moneys, §15-20-319.

Powers and duties, §15-20-308.

**Soil nutrient application and
poultry litter utilization.**General provisions, §§15-20-1101 to
15-20-1114.**Soil nutrient management planners
and applicators.**Certification, §§15-20-1001 to
15-20-1008.**Surplus nutrient removal incentives,**
§§15-20-1201 to 15-20-1206.**System of natural areas.**

Composition, §15-20-303.

Established, §15-20-303.

Title of act.

Short title, §15-20-301.

EQUITY INVESTMENT INCENTIVE**ACT OF 2007**, §§15-4-3301 to
15-4-3306.**ETHANOL.****Alternative fuels development,**
§§15-13-101 to 15-13-305.**EVIDENCE.****Fishing.**Prima facie evidence of fishing,
§15-43-105.**Flood control.**

Rules for taking evidence, §15-24-103.

Hunting.Prima facie evidence of hunting,
§15-43-105.**Liquefied petroleum gas.**Containers bearing owner's
identification.Unlawful use of containers,
§15-75-406.**Oil and gas.**

Commission.

Witnesses.

Procedure in case of refusal to
testify, §15-71-112.

Partition of oil and gas lease interests.

Evidence authorizing lease,
§15-73-407.**Trees and timber.**

State lands.

Unlawful cutting or removal.

Certificate by secretary of state of
land ownership.Presumptive evidence,
§15-32-310.**EXAMINATIONS.****Liquefied petroleum gas.**Certification of handlers and
installers, §15-75-303.**EXECUTION OF JUDGMENTS.****Mines and minerals.**

Lease of mineral rights.

Agreement subsequent to discharge
of receiver, §15-56-309.**EXPLOSIVES.****Investigations.**

Liquefied petroleum gas, §15-75-209.

Liquefied petroleum gas.

Investigations, §15-75-209.

Oil and gas.Transportation of compressed gases.
Accidents.

Liability generally, §15-75-109.

F**FARMS AND FARMING.****Fishing.**Taking fish from fish farm unlawful,
§15-43-330.

Penalty, §15-43-330.

FEDERAL AID.**Flood control.**

- Applications for, §15-24-105.
- Receipt of federal funds, §15-24-108.

Forests and forestry.

- Acceptance by commission, §15-31-109.

Game and fish.

- Commission.
 - Hunter training and safety program.
 - Funds for program, §15-43-238.

Rivers.

- Natural and scenic river system.
- Receipt by commission, §15-23-315.

Soil conservation and domestic allotment.

- Acceptance, §15-21-405.
- Use of funds, §15-21-405.

FEES.**Brine production.**

- Drilling permits, §15-76-318.

Development finance corporations.

- Supervision, §15-4-905.

Groundwater.

- Withdrawal of water, §15-22-913.
- Disposition of fees, §15-22-914.

Inventions.

- Assistance to inventors.
- Proposals for inventions.
- Review by center, §15-4-1406.

Liquefied petroleum gas.

- Credited towards liquefied petroleum gas fund, §15-75-106.
- Deposited in state treasury, §15-75-106.
- Schedule of inspection and registration fees, §15-75-105.
- Suspension of inspection and registration fees, §15-75-111.
- Use, §15-75-106.

Mines and minerals.

- Claims on public lands.
- Recordation, §15-56-202.

Natural resources commission.

- Dam construction.
- Permits, §15-22-219.
- Water development fund.
- Earnings and fees to fund, §15-22-514.

Oil and gas.

- Commission, §15-71-110.
- Salt water wells into which debrominated brine is injected, §15-71-110.

Open-cut land reclamation.

- Permit fees, §§15-57-311, 15-57-319.

Petroleum storage tank trust fund bond financing.

- Pledged fees, §15-5-1205.

FEES —Cont'd**Poultry feeding operations.**

- Registration with natural resources commission, §15-20-904.

Procurement.

- Trees and timber.
 - Based upon volume or weight.
 - Actions to recover correct purchase price.
 - Attorneys' fees, §15-32-413.

Quarries, §15-57-414.**Sparta aquifer critical groundwater counties.**

- Conservation fee.
- Levy, §15-22-1214.
- Payment, §15-22-1215.

Trees and timber.

- Measuring and marking logs.
- County timber inspectors, §15-32-410.
- Purchases based upon volume or weight.
- Actions to recover difference in purchase price.
- Attorneys' fees, §15-32-413.
- Wages for piece work.
- Actions to recover owed wages.
- Attorneys' fees, §15-32-413.

FERTILIZERS.**Poultry feeding operations.**

- Registration with natural resources commission, §§15-20-901 to 15-20-906.

Soil nutrient application and poultry litter utilization.

- General provisions, §§15-20-1101 to 15-20-1114.

Soil nutrient management planners and applicators.

- Certification, §§15-20-1001 to 15-20-1008.

Surplus nutrient removal incentives, §§15-20-1201 to 15-20-1206.**FILMS.****Digital product and motion picture industry development, §§15-4-2001 to 15-4-2011.****FINANCE.****Bond issues.**

- Arkansas Amendment 82 implementation act, §§15-4-3201 to 15-4-3224.

Capital development companies, §§15-4-1001 to 15-4-1031.**Development finance corporations, §§15-4-901 to 15-4-927.**

FINANCE AND ADMINISTRATION DEPARTMENT.

Economic development incentive,
§§15-4-1601 to 15-4-1609.

Revenue division.

Sales and use taxes.
Refunds, §15-4-1704.

FINES.

Brine production, §15-76-303.
Improper disposal of salt water,
§15-76-201.

Dogs.

Running at large.
Enforcement of regulation by
employees of game and fish
commission, §15-41-113.

Fishing.

Barrel or pond nets, §15-43-324.
Electrical devices for stunning and
taking fish, §15-43-316.
Enclosed lake or pond.
Taking fish from, §15-43-329.
Fish farm.
Taking fish from, §15-43-330.
Hoop nets, §15-43-324.
Licenses.
Fishing without license, §15-42-101.
Nonresident fishing license,
§15-42-107.
Public water withdrawal endangering
fish, §15-44-111.

Fish runways.

Obstruction, §15-44-110.

Game and fish refuges.

Entire state as wild fowl sanctuary,
§15-45-210.
State parks as bird sanctuaries,
§15-45-211.

Hunting.

Accidents.
Refusal to submit to tests for drugs
and alcohol, §15-42-127.
Deer.
Firearms.
Negligent discharge while hunting
deer, §15-43-205.
Highways.
Deer hunting camp on,
§15-43-206.
Guides, §15-43-239.
Licenses.
Hunting without license, §15-42-101.
Setting fires, §15-43-107.
Storage regulations for game animals
and birds, §15-44-108.
Liquefied petroleum gas, §15-75-103.
Civil penalty, §15-75-323.

FINES —Cont'd

Liquefied petroleum gas —Cont'd

Subpoenas of board.
Disobedience, §15-75-321.
Unlawful use, §15-75-406.

Logging without boundaries ascertained, §15-32-101.

Logging without land survey, §15-32-101.

Mercury refiners, §15-60-102.

Mines and minerals.

Claims on public lands.
Indexed record books.
Failure or refusal of recorder to
keep index, §15-56-205.

Natural area rules and regulations violations, §15-20-502.

Oil and gas.

Emergency set-aside programs,
§15-72-803.
Gasoline, fuel, illuminating and
heating oil, §15-74-401.
Condemnation of gasoline by
inspectors.
Removal of placards attached to
gasoline pumps, §15-74-406.

Records.

Falsifying or failure to keep,
§15-72-104.

Royalties.

Willful or malicious violations of
provisions, §15-74-701.

Safe drinking water act.

Willful violation, §15-72-104.

Weights and measures.

Discounting crude for waste,
shrinkage, etc., §15-74-203.

Quarries, §15-57-414.

Seismic operations.

Permit violations, §15-71-114.

Sparta aquifer critical groundwater counties.

False report or tampering with meter,
§15-22-1217.

Surface coal mining and reclamation.

Conflicts of interest, §15-58-206.
False statement, representation or
certification, §15-58-306.
Interfering with director or agent,
§15-58-305.
Violating condition of permit or order,
§15-58-304.

Timber cut without boundaries ascertained, §15-32-101.

Timber removal without land survey, §15-32-101.

FINES —Cont'd**Water allocation and use.**

Violations of provisions generally,
§15-22-204.

Weights and measures.

Oil and gas.

Discounting crude for waste,
shrinkage, etc., §15-74-203.

FIREARMS AND OTHER WEAPONS.**Hunting.**

Negligent discharge of firearms while
hunting deer, §15-43-205.

State parks division officers.

Award of pistol upon retirement,
§15-11-210.

FIRES AND FIRE PREVENTION.**Compacts.**

South Central interstate forest fire
protection compact, §§15-33-101 to
15-33-103.

Forest fires.

Fire control or fire rescue equipment.
Donation to forestry commission,
§15-31-116.

South Central interstate forest fire
protection compact, §§15-33-101 to
15-33-103.

FISHING.**Auctions.**

Taking fish from fish farm unlawful.
Confiscated property to be sold at
public auction, §15-43-330.

Barrel nets.

Generally, §15-43-324.
Possession and use, §15-43-324.

Beaver control fund.

Development of public hunting and
fishing areas, §15-42-125.

Campfires.

Extinguishing, §15-43-107.

Dams.

Runways for fish required, §15-44-110.

Definitions, §15-43-301.**Electrical devices.**

Use of device for stunning and taking
fish, §15-43-316.

Misdemeanor offense, §15-43-316.

Penalty for violation of provisions,
§15-43-316.

Evidence.

Prima facie evidence of fishing,
§15-43-105.

Farms.

Taking fish from fish farm unlawful,
§15-43-330.
Penalty, §15-43-330.

FISHING —Cont'd**Fees.**

License fees.

Resident fishing licenses,
§15-42-104.

Special fees, §15-42-104.

Three-day fishing license,
§15-42-110.

Use of fees collected, §15-42-124.

Use of fees collected, §15-41-111.

Nonresident fishing licenses,
§15-42-107.

Three-day fishing license,
§15-42-108.

Fires.

Setting fires on land of another,
§15-43-107.

Funds.

Beaver control fund.

Development of public hunting and
fishing areas, §15-42-125.

Guides.

Responsibilities, §15-43-239.

Hoop nets.

Generally, §15-43-324.

Possession and use, §15-43-324.

Lakes or ponds.

Taking fish from enclosed lake or pond
without consent of owner.

Penalty, §15-43-329.

Warnings required, §15-43-329.

Licenses.

Armed services.

Resident on active duty entitled to
free license, §15-42-123.

Application, §15-42-123.

Expiration of stamped license,
§15-42-123.

Rules and regulations, §15-42-123.

Stamped license, §15-42-123.

Fees.

Nonresident fishing licenses,
§15-42-107.

Free or discounted licenses.

Issuance prohibited, §15-42-105.

Lifetime residents sportsman's
hunting and fishing permit,
§15-42-104.

Nonresident fishing licenses.

Fees, §15-42-107.

Nonresident over 65.

Reciprocity agreements,
§15-42-126.

Required, §15-42-107.

Three-day fishing license,
§15-42-108.

Fee, §15-42-108.

Rules and regulations, §15-42-108.

FISHING —Cont'd**Licenses —Cont'd**

Resident fishing licenses.

Fees.

Special fees, §15-42-104.

Three-day fishing license,
§15-42-110.

Use of fees collected, §15-42-124.

Required, §15-42-106.

Three-day fishing licenses.

Fee, §15-42-110.

States bordering Arkansas.

Issuance of licenses in states,
§15-42-122.

Penalty for violation of provisions,
§15-42-122.

Without license.

Penalty for fishing without license,
§15-42-101.

Military affairs.

Licenses.

Resident on active duty entitled to
free license, §15-42-123.

Nonresidents.

License, §15-42-107.

Nonresidents over 65.

Reciprocity agreements,
§15-42-126.

Three-day fishing license,
§15-42-108.

Penalties.

Electrical devices used for stunning
and taking fish, §15-43-316.

Licenses.

Failure to have nonresident license,
§15-42-107.

Issuance of licenses in states
bordering Arkansas.

Violation of provisions,
§15-42-122.

Without license, §15-42-101.

Obstructing stream, §15-44-110.

Taking fish from fish farm unlawful,
§15-43-330.

Pond nets.

Generally, §15-43-324.

Possession and use, §15-43-324.

Ponds.

Taking fish from enclosed lake or
pond.

Without consent of owner,
§15-43-329.

Warnings required, §15-43-329.

Presumptions.

Taking fish from fish farm unlawful.

Rebuttable presumption, §15-43-330.

Reciprocity.

Nonresident licenses for nonresidents
over 65, §15-42-126.

FISHING —Cont'd**Residents.**

License for fishing.

Fees.

Special fees, §15-42-104.

Three-day fishing license,
§15-42-110.

Use of fees collected, §15-42-124.

Required, §15-42-106.

Three-day fishing license,
§15-42-110.

Rules and regulations.

Licenses.

Armed services.

Resident on active duty entitled to
free license, §15-42-123.

Nonresident fishing licenses.

Three-day fishing license,
§15-42-108.

Senior citizens.

Nonresident fishing license.

Reciprocity agreements, §15-42-126.

Resident fishing license.

Permanent license, §15-42-104.

States.

Licenses.

Issuance of licenses in states
bordering Arkansas, §15-42-122.

Penalty for violation of provisions,
§15-42-122.

Streams.

Obstructing stream.

Penalty for obstructing stream,
§15-44-110.

**Stunning and taking fish with
electrical devices, §15-43-316.**

Penalty for misdemeanor of offense,
§15-43-316.

Waters and watercourses.

Enclosed lake or pond.

Taking fish without consent of
owner, §15-43-329.

Warnings required, §15-43-329.

Lowering stage of water prohibited,
§15-44-111.

Screening intake pipes required,
§15-44-111.

Obstructing stream.

Penalty for obstructing stream,
§15-44-110.

FLOOD CONTROL.**Bonds to finance.**

Water resources bonds generally,
§§15-22-1301 to 15-22-1313.

Compacts.

Power of soil and water commission to
enter into, §15-24-106.

FLOOD CONTROL —Cont'd**Construction and interpretation.**

Cumulative nature of subchapter,
§15-24-101.

Drainage districts.

Rights of districts unaffected,
§15-24-104.

Eminent domain.

Power of natural resources
commission, §§15-24-102,
15-24-107.

Evidence.

Rules for taking evidence, §15-24-103.

Federal aid.

Applications for, §15-24-105.
Receipt of federal funds, §15-24-108.

Floodplain administrators.

Accreditation by commission,
§15-24-109.

Levee districts.

Rights of districts unaffected,
§15-24-104.

Natural resources commission.

Accreditation of floodplain
administrators, §15-24-109.
Compacts with other states.
Power to enter into, §15-24-106.
Cooperation with United States,
§15-24-105.
Duties, §15-24-102.
Eminent domain.
Right of eminent domain,
§15-24-107.
Evidence.
Rules for taking evidence,
§15-24-103.
Powers.
Eminent domain, §15-24-107.
Stream control, §15-24-102.
Receipt of federal or other funds,
§15-24-108.

Streams.

Control of streams.
Powers of natural resources
commission, §15-24-102.

United States.

Cooperation with United States,
§15-24-105.

FLOOD LOSS PREVENTION.**Floodplain administrator.**

Accreditation by natural resources
commission, §15-24-109.

FOREST FIRES.**Fire control or fire rescue
equipment.**

Donation to forestry commission,
§15-31-116.

FOREST FIRES —Cont'd

**South Central interstate forest fire
protection compact, §§15-33-101
to 15-33-103.**

FORESTS AND FORESTRY.**Aid to owners of private forest land.**

Conflicts of interest.

Interest in purchase of estimated
timber prohibited, §15-31-204.

Revenues collected under provisions.

Disposition, §15-31-205.

State forester.

Administration of provisions,
§15-31-201.

Designation and estimation of trees,
§15-31-202.

Forestry advice, §15-31-202.

Free services, §15-31-203.

Payment for services, §15-31-203.

Bonds, surety.

State forester, §15-31-104.

Commission.

Appointment, §15-31-102.

Classification of revenues, §15-31-115.

Compensation, §§15-31-102, 15-31-115.

Uniform allowance program,
§15-31-110.

Composition, §15-31-102.

Creation, §15-31-101.

Duties, §15-31-106.

Employees.

Compensation.

Uniform allowance program,
§15-31-110.

Enforcement of Poison Spring State
Forest regulations, §15-31-112.

Expenses of members, §15-31-102.

Fees, §15-31-111.

Fines to school district funds,
§§15-31-113, 15-31-114.

Fire control or fire rescue equipment.

Donation to commission, §15-31-116.

Grants.

Acceptance, §15-31-109.

Nepotism.

Employment of relatives prohibited,
§15-31-107.

Oath of office, §15-31-102.

Officers, §15-31-103.

Organization, §15-31-103.

Powers, §15-31-106.

Purposes, §15-31-101.

Qualifications of members, §15-31-102.

Quorum, §15-31-103.

Records, §15-31-103.

Reports.

Annual report to governor,
§15-31-106.

FORESTS AND FORESTRY —Cont'd**Commission —Cont'd**

Research.

Powers and duties, §15-31-106.

Rules and regulations, §15-31-106.

Terms of office, §15-31-102.

Timber management plans,
§15-31-111.

Vacancies in office.

Filling, §15-31-102.

Compacts.

South Central interstate forest fire
protection compact, §§15-33-101 to
15-33-103.

Conflicts of interest.

Aid to owners of private forest land.

Interest in purchase of estimated
timber prohibited, §15-31-204.

Federal aid.

Acceptance by commission, §15-31-109.

Fires and fire prevention.

Fire control or fire rescue equipment.

Donation to forestry commission,
§15-31-116.

South Central interstate forest fire
protection compact, §§15-33-101 to
15-33-103.

Grants.

Acceptance by commission, §15-31-109.

Nepotism.

Forestry commission.

Employment of relatives,
§15-31-107.

Oaths.

Commission.

Oath of office of members,
§15-31-102.

Penalties.

Aid to owners of private forest land.

Interest in purchase of estimated
timber, §15-31-204.

Records.

Commission, §15-31-103.

Reports.

Commission.

Annual report to governor,
§15-31-106.

Rules and regulations.

Commission, §15-31-106.

**South Central interstate forest fire
protection compact.**

Effective date, §15-33-103.

Execution.

Authorized, §15-33-101.

General provisions, §15-33-101.

State forester.

Compact administrator, §15-33-102.

Text, §15-33-101.

**FORESTS AND FORESTRY —Cont'd
State forester.**

Aid to owners of private forest land.

Administration of provisions,
§15-31-201.

Assistants, §15-31-105.

Bonds, surety, §15-31-104.

Employees, §15-31-105.

Employment by commission,
§15-31-104.

Qualifications, §15-31-104.

South Central interstate forest fire
protection compact.

Compact administrator, §15-33-102.

State forestry fund.

Creation, §15-31-108.

Grants deposited in, §15-31-109.

Use, §15-31-108.

FORFEITURES.**Lease of oil, gas and mineral
interests.**

Forfeiture of leases generally,
§§15-73-203 to 15-73-208.

Oil and gas.

Royalties.

Lessee receiving more than share
from sale.

Forfeiture of lease, §15-74-708.

FRAUD.**Oil and gas.**

Proceeds.

Fraudulently withholding payment,
§15-74-602.

**Surface coal mining and
reclamation.**

Misdemeanors, §15-58-306.

**Timber trust money, §§15-32-604,
15-32-605.****FREEDOM OF INFORMATION.****Mines and minerals.**

Claims on public lands.

Record book.

Right to examine, §15-56-205.

G**GENERAL ASSEMBLY.****Rivers.**

Natural and scenic rivers system.

Proposed contracts and compacts
with federal government.

Approval of general assembly
required, §15-23-310.

**GEOGRAPHIC INFORMATION
SYSTEMS BOARD.**

Authority, §15-21-504.

GEOGRAPHIC INFORMATION SYSTEMS BOARD —Cont'd

Clearinghouse.

Defined, §15-21-502.

Composition, §15-21-503.

Creation, §15-21-503.

Definitions, §15-21-502.

Digital data repository.

Defined, §15-21-502.

Duties, §15-21-504.

Funding, §15-21-503.

Goals, §15-21-501.

Members, §15-21-503.

Metadata.

Defined, §15-21-502.

Powers, §15-21-504.

Purpose of act, §15-21-501.

Responsibilities, §15-21-504.

GEOLOGICAL SURVEY.

Appointment, §15-55-202.

Bonds, surety.

State geologist, §15-55-204.

Commissioner of state lands.

Access to be granted and information to be provided to, §15-55-213.

Compensation, §15-55-202.

Composition, §15-55-202.

Creation, §15-55-201.

Deposits.

Moneys deposited into state treasury, §15-55-212.

Duties, §15-55-208.

Established, §15-55-201.

Expenses of members, §15-55-202.

Investigations.

Expenses shared by state and United States, §15-55-211.

Reports, §15-55-210.

Meetings, §15-55-203.

Notice.

Mineral discoveries, §15-55-303.

Location and extent of state minerals.

Agencies to be notified, §15-55-209.

Oath of office, §15-55-202.

Office.

Location, §15-55-206.

Officers, §15-55-203.

Powers, §15-55-207.

Quorum, §15-55-203.

Records, §15-55-203.

Free access to public survey records, §15-55-302.

Rules and regulations, §15-55-203.

Seal, §15-55-206.

State geologist.

Appointment, §15-55-204.

GEOLOGICAL SURVEY —Cont'd

State geologist —Cont'd

Bond, surety, §15-55-204.

Duties, §15-55-204.

Custodian of property and disbursing agent, §15-55-204.

Geological assistants and engineers.

Appointment, §15-55-205.

Powers, §15-55-204.

Survey, undertaking.

Commencement of work, §15-55-302.

Notice.

Mineral discoveries, §15-55-303.

Purposes, §15-55-301.

Records, free access to public records, §15-55-302.

Reports, §15-55-301.

Terms of office, §15-55-202.

Vacancies in office.

Filling, §15-55-202.

GEOLOGY.

Geological survey, §§15-55-301, 15-55-302.

GIFTS.

Environmental quality.

Natural heritage commission.

Power to receive gifts, §§15-20-309, 15-20-318.

State parks, recreation and travel commission.

Disposal of railroad track material.

Gift or contract to a regional intermodal facilities authority, §15-11-211.

Tourist information bureaus.

Preferential treatment or consideration in accepting gifts prohibited, §15-11-304.

GOOD SAMARITANS.

Oil and gas.

Transportation of compressed gases. Accidents.

Nonliability of persons rendering aid, §15-75-109.

Liability not precluded for gross negligence or intentional misconduct, §15-75-109.

GOVERNOR.

Economic advisor.

Appointment, §15-1-101.

Duties, §15-1-101.

Establishment of position, §15-1-101.

Energy.

Southern states energy compact.

Ex officio member of board, §15-10-402.

GOVERNOR —Cont'd**Oil and gas.**

Interstate compact to conserve oil and gas, §§15-72-901 to 15-72-904.

Water resources development.

Bond issues.

Approval of governor, §15-22-607.

Workforce investment act.

Local workforce investment areas.

Designation, §15-4-2208.

State plan for workforce investment system strategy.

Submission to United States secretary of labor, §15-4-2207.

GRANTS.**Biodiesel incentive act.**

Producers, §15-4-2804.

Construction assistance revolving loan fund.

Authority to accept grants, §15-5-903.

Economic development.

Postdoctoral science and engineering grant program for economic development and knowledge-based job growth, §§15-3-401 to 15-3-405.

Forests and forestry.

Acceptance by commission, §15-31-109.

Natural and cultural resources council, §15-12-103.**Rural development program, §15-6-107.****Small businesses.**

Development finance authority.

Power to make grants, §15-5-712.

State publicity.

Regional tourist promotion agencies, §15-11-405.

Wildlife observation trails pilot program.

Grant distribution, §15-11-708.

GRAVEL.**Mining from streams or streambeds.**

Open-cut land.

Reclamation, §§15-57-310 to 15-57-320.

GROSS RECEIPTS TAX.**Exemptions.**

Steel manufacturers tax incentives, §15-4-2403.

Steel manufacturers tax incentives.

Exemption from taxes, §15-4-2403.

GROUNDWATER, §§15-22-901 to 15-22-915.**Appeals.**

Decisions and actions under subchapter, §15-22-912.

GROUNDWATER —Cont'd**Arkansas natural resources commission.**

Critical areas.

Designation, §15-22-908.

Groundwater protection program.

Development, §15-22-906.

Limits on powers, §15-22-905.

Powers.

Enumerated, §15-22-904.

Generally, §15-22-904.

Limitations, §15-22-905.

Water conservation education and information program.

Development, §15-22-907.

Citation of subchapter, §15-22-901.**Conservation.**

Water conservation education and information program.

Components.

Minimum components, §15-22-907.

Development by commission, §15-22-907.

Conveyances.

Rights, §15-22-911.

Critical areas.

Designation by commission, §15-22-908.

Withdrawal of water.

Consideration of availability of alternative supplies, §15-22-910.

Declaration of rights.

Required for withdrawal, §15-22-909.

General provisions, §15-22-911.

Grandfathering existing wells, §15-22-910.

New groundwater rights applications, §15-22-910.

Preferences in granting rights, §15-22-910.

Definitions, §15-22-903.**Fees.**

Withdrawal of water, §15-22-913.

Disposition of fees, §15-22-914.

Findings of general assembly, §15-22-902.**Funds.**

Disposition, §15-22-914.

Hearings.

Critical areas.

Groundwater rights, §15-22-909.

Designation of critical areas.

Public hearings, §15-22-908.

Marketing.

Rights, §15-22-911.

Penalties.

Disposition, §15-22-914.

GROUNDWATER —Cont'd**Protection program.**

Components.

Minimum components, §15-22-906.

Development by commission,
§15-22-906.

Effect on regulatory authorities,
§15-22-906.

Purpose of subchapter, §15-22-902.**Rights.**

Cancellation, §15-22-911.

Competing applications specifying
same priority, §15-22-911.

Conveying, §15-22-911.

Duration, §15-22-911.

Issuance for beneficial uses,
§15-22-911.

Limits on annual withdrawals,
§15-22-911.

Marketing, §15-22-911.

Place of use described in right.

Limiting effect, §15-22-911.

Transferring, §15-22-911.

Safe drinking water fund,

§§15-22-1101 to 15-22-1112.

Sparta aquifer critical groundwater

counties, §§15-22-1201 to
15-22-1218.

Sustaining aquifers.

Metering of withdrawals, §15-22-915.

Title of subchapter, §15-22-901.**Water conservation education and
information program.**

Components.

Minimum components, §15-22-907.

Development by commission,
§15-22-907.

Withdrawal of water.

Critical areas.

Consideration of availability of
alternative supplies, §15-22-910.

Declaration of rights.

Required for withdrawal,
§15-22-909.

General provisions, §15-22-911.

Grandfathering existing wells,
§15-22-910.

New groundwater rights
applications, §15-22-910.

Preferences in granting rights,
§15-22-910.

Fees, §15-22-913.

Disposition, §15-22-914.

Limits on annual withdrawals,
§15-22-911.

Sustaining aquifers.

Metering of withdrawals,
§15-22-915.

GUARDIAN AND WARD.**Oil and gas.**

Partition of oil and gas lease interests,
§15-73-405.

Partition.

Oil and gas lease interests,
§15-73-405.

H**HARBORS AND PORTS.**

**Arkansas port priority improvement
program, §§15-23-901 to 15-23-906.**

Port priority improvement program,
§§15-23-901 to 15-23-906.

**HAZARDOUS MATERIALS,
SUBSTANCES AND WASTE.****Facilities.**

Bonds to finance.

Water resources bonds generally,
§§15-22-1301 to 15-22-1313.

Construction assistance revolving loan
fund, §§15-5-901 to 15-5-910.

HEARINGS.**Environmental quality.**

Dedication of property.

Changes in property interests
created by dedication,
§15-20-314.

Groundwater.

Critical areas.

Designation.

Public hearing, §15-22-908.

Groundwater rights, §15-22-909.

Mines and minerals.

Lease of mineral rights.

Life tenants.

Petitions to lease, §15-56-409.

Natural resources commission.

Dam construction.

Permits, §15-22-212.

Oil and gas.

Commission, §15-71-103.

Hearing officers, §15-71-106.

Integration of production in drilling
units, §15-72-304.

Notice, §15-72-323.

Quarry operations.

Enforcement of chapter, §15-57-413.

**Surface coal mining and
reclamation.**

Adjudicatory hearings.

Applications for review, §15-58-209.

Presiding officers, §15-58-210.

Procedures generally, §15-58-211.

Legislative hearings, §15-58-207.

Examiners, §15-58-208.

HEARINGS —Cont'd**Surface coal mining and reclamation —Cont'd**

Use of acquired lands, §15-58-407.

HEIRS.**Oil and gas.**

Drilling.

Promotion, §15-72-701.

Surface owner notification,
§15-72-203.

Leasing, §15-73-309.

Ownership, §15-72-607.

Royalty payments, §15-74-604.

Timber sales.

Unknown or unlocatable co-owners or coheirs, §15-32-501.

HIGHWAYS, ROADS AND STREETS.**Arkansas public roads**

improvements credit act,
§§15-4-2301 to 15-4-2307.

Deer hunting camps.

Establishment on highways
prohibited, §15-43-206.

Game and fish.

Deer hunting camps.

Establishment on highways
prohibited, §15-43-206.

Penalty for establishment,
§15-43-206.

Hunting.

Deer hunting camps.

Establishment on highways
prohibited, §15-43-206.

Penalty for establishment,
§15-43-206.

Penalties.

Deer hunting camps on highways,
§15-43-206.

Public roads improvements tax

credit, §§15-4-2301 to 15-4-2307.

Citation of act, §15-4-2301.

Definitions, §15-4-2303.

Determination of credit, §15-4-2306.

Economic development commission.

Powers and duties, §15-4-2307.

Entitlement to credit, §15-4-2306.

Generally, §15-4-2306.

Legislative declaration, §15-4-2302.

Projects.

Approval, §15-4-2304.

Defined, §15-4-2303.

Public roads incentive fund,
§15-4-2305.

Title of act, §15-4-2301.

Taxation.

Public roads improvements tax credit,
§§15-4-2301 to 15-4-2307.

HONEY CREEK WATERSHED.**Nutrient surplus areas.**

Areas declared, §15-20-1104.

HOUSING.

Arkansas housing trust fund act of 2009, §§15-5-1701 to 15-5-1709.

Senior citizens.

Retirement community program,
§§15-14-401 to 15-14-108.

Trust fund act of 2009, §§15-5-1701 to 15-5-1709.

HOUSING TRUST FUND, §§15-5-1701 to 15-5-1709.

Advisory committee.

Created, §15-5-1706.

Members, §15-5-1706.

Roles and responsibilities, §15-5-1707.

Definitions, §15-5-1703.**Eligible activities and applicants.**

Enumerated, §15-5-1708.

Minimum requirements, §15-5-1709.

Established, §15-5-1704.**Evaluation of applications,**

§15-5-1709.

Legislative purpose, §15-5-1702.

Powers and duties of authority,
§15-5-1705.

Purpose of fund, §15-5-1708.

Selection of activities to be funded,
§15-5-1709.

Sources of funding, §15-5-1705.**Title of act,** §15-5-1701.**Use of funds,** §§15-5-1704, 15-5-1708.**HUNTING.****Arkansas hunting heritage**

protection act, §§15-41-301 to 15-41-304.

Definitions, §15-41-303.

Legislative findings, §15-41-302.

Recreational hunting, §15-41-304.

Short title, §15-41-301.

Beaver control fund.

Development of public hunting and
fishing areas, §15-42-125.

Campfires.

Extinguishing, §15-43-107.

Camping.

Deer season.

Regulation for camping.

Deer hunting camp on highways
prohibited, §15-43-206.

Cold storage plants or facilities.

Storage regulations, §15-44-108.

**Consent implied to chemical test
upon shooting accident,**
§15-42-127.

HUNTING —Cont'd**Deer.****Does.**

Local option in determining doe killing area, §15-43-204.

Negligent discharge of firearms while hunting deer, §15-43-205.

Season for hunting deer.

Camping regulations.

Deer hunting camp on highways prohibited, §15-43-206.

Does.

Local option to determine doe killing area, §15-43-204.

Ballots, §15-43-204.

Effect of election results, §15-43-204.

Petition for election, §15-43-204.

Dogs.

Attempted theft or theft of licensed dogs, §15-42-303.

Elections.

Doe killing area.

Local option to determine area, §15-43-204.

Ballots, §15-43-204.

Effect of election results, §15-43-204.

Evidence.

Prima facie evidence of hunting, §15-43-105.

Fees.

Licenses.

Resident hunting licenses.

Use of fees collected, §15-42-124.

Use of fees collected, §15-41-111.

Fires.

Setting fires on land of another, §15-43-107.

Funds.

Beaver control fund.

Development of public hunting and fishing areas, §15-42-125.

Guides.

Responsibilities, §15-43-239.

Highways.

Deer hunting camps.

Establishment on highways prohibited, §15-43-206.

Penalty for establishment, §15-43-206.

Hunter training and safety program.

Establishment, maintenance and operation of program, §15-43-238.

Licenses.

Armed services.

Resident on active duty entitled to free license, §15-42-123.

Application, §15-42-123.

HUNTING —Cont'd**Licenses —Cont'd****Armed services —Cont'd**

Resident on active duty entitled to free license —Cont'd

Expiration of stamped license, §15-42-123.

Rules and regulations, §15-42-123.

Stamped license, §15-42-123.

Free or discounted licenses.

Issuance prohibited, §15-42-105.

Lifetime residents sportsman's hunting and fishing permit, §15-42-104.

Nonresident hunting license.

Nonresidents over 65.

Reciprocity agreements, §15-42-126.

Resident hunting licenses.

Fees, §15-42-104.

Special fees, §15-42-104.

Use of fees collected, §15-42-124.

States bordering Arkansas.

Issuance of licenses in states, §15-42-122.

Penalty for violation of provisions, §15-42-122.

Without license.

Penalty for hunting without license, §15-42-101.

Military affairs.

Licenses.

Resident on active duty entitled to free license, §15-42-123.

Nonresidents.

Licenses.

Nonresidents over 65.

Reciprocity agreements, §15-42-126.

Penalties.

Licenses.

Issuance of licenses in states bordering Arkansas.

Violation of provisions, §15-42-122.

Without license, §15-42-101.

Negligent discharge of firearms while hunting deer, §15-43-205.

Shooting accidents.

Refusal to submit to tests for drugs and alcohol, §15-42-127.

Reciprocity.

Nonresident licenses for nonresidents over 65, §15-42-126.

Resident hunting licenses.

Fees, §15-42-104.

Special fees, §15-42-104.

Use of fees collected, §15-42-124.

HUNTING —Cont'd**Rules and regulations.**

Licenses.

Armed services.

Resident on active duty entitled to free license, §15-42-123.

Senior citizens.

Nonresident hunting license.

Reciprocity agreements, §15-42-126.

Resident hunting license.

Permanent license, §15-42-104.

Shooting accidents.

Implied consent for chemical tests, §15-42-127.

States.

Licenses.

Issuance of licenses in states bordering Arkansas, §15-42-122.

Penalty for violation of provisions, §15-42-122.

Training and safety program.

Hunter training and safety program, §15-43-238.

Weapons.

Negligent discharge of firearms while hunting deer, §15-43-205.

I**ILLINOIS RIVER WATERSHED.****Nutrient surplus areas.**

Areas declared, §15-20-1104.

IMMUNITY.**Accidents.**

Oil and gas.

Transportation of compressed gases, §15-75-109.

Brine production.

Unit expenses, §15-76-317.

Capital development companies.

Governing board and officers, §15-4-1009.

Caves.

Liability of owners limited, §15-20-606.

Industrial development.

County and regional industrial development companies.

Directors, officers, managers and members, §15-4-1207.

Sparta aquifer critical groundwater counties.

Conservation board members, §15-22-1211.

Water resources bonds.

Natural resources commission members or officers, §15-22-1312.

INCOME TAX.**Biodiesel fuel suppliers.**

Credits, §15-4-2803.

Capital development companies.

Exemption, §15-4-1025.

Income tax credits, §15-4-1026.

Credits.

Biodiesel fuel suppliers, §15-4-2803.

Investment tax incentives, §15-4-2706.

Job-creation tax credit, §15-4-2705.

Research and development tax credit, §15-4-2708.

Technology-based enterprises, §15-4-2706.

Venture capital investment, §15-5-1406.

Registration of credits, §15-5-1407.

Exemptions.

Capital development companies, §15-4-1025.

Industrial development corporations, §15-4-524.

Financial institutions.

Capital development companies.

Credits, §15-4-1026.

Investment tax incentives,

§15-4-2706.

Job-creation tax credit, §15-4-2705.**Research and development tax credit, §15-4-2708.****Technology-based enterprises.**

Credits, §15-4-2706.

Venture capital investment.

Credits, §15-5-1406.

Registration of, §15-5-1407.

INDEXES AND INDEXING.**Mines and minerals.**

Claims on public lands.

Record books, §15-56-205.

INDUSTRIAL DEVELOPMENT BONDS.**Industrial development guaranty bonds.**

Bond debt service amount.

Disposition, §15-4-710.

Citation of law.

Short title, §15-4-701.

Commission.

Authority to use moneys if account is insufficient, §15-4-702.

Contents, §15-4-704.

Delivery of bonds, §15-4-706.

Execution of bonds, §15-4-706.

Form, §15-4-704.

Insufficiency of funds.

Authority to use commission money, §15-4-702.

INDUSTRIAL DEVELOPMENT**BONDS —Cont'd****Industrial development guaranty bonds —Cont'd**

Issuance of bonds, §15-4-704.

Authority, §15-4-703.

Notice to state board of finance,
§15-4-710.

Obligations of commission, §15-4-709.
Proceeds.

Deposit of revenues and net
proceeds, §15-4-709.

Resolution authorizing bonds,
§15-4-704.

Sale of bonds, §15-4-708.

Temporary notes or bonds, §15-4-707.
Title of law.

Short title, §15-4-701.

Trust indenture, §15-4-705.

Industrial revenue bond guaranty law.

Amortization payments.

Defined, §15-4-602.

When amortization payments may
be guaranteed, §15-4-604.

Applications for guaranty.

Review, §15-4-606.

Citation of law.

Short title, §15-4-601.

Commission.

Grants.

Acceptance, §15-4-607.

Investigations, §15-4-609.

Remedies of bondholders.

Powers as to, §15-4-609.

Revenue bond guaranty reserve
account.

Establishment, §15-4-605.

Review of applications, §15-4-606.

Rules and regulations, §15-4-609.

Evidence to support guaranty.

Required, §15-4-606.

Guaranty agreement.

Provisions, §15-4-608.

Power to grant or deny guaranty
bonds, §15-4-603.

Remedies of bondholders.

Powers of commission as to,
§15-4-609.

Revenue bond guaranty reserve
account, §15-4-605.

Grants to account.

Acceptance, §15-4-607.

Title of law.

Short title, §15-4-601.

When bonds may be guaranteed,
§15-4-604.

INDUSTRIAL DEVELOPMENT**BONDS —Cont'd****Small businesses.**

Stimulating small business growth act.

General provisions, §§15-4-401 to
15-4-416.

INDUSTRIAL DEVELOPMENT**CORPORATIONS, §§15-4-501 to
15-4-525.****Amendment of articles of****incorporation, §15-4-511.**

Certificate of amendment, §15-4-511.

Filing fee, §15-4-512.

Filing, §15-4-511.

Fee, §15-4-512.

Articles of incorporation.

Acknowledgments of incorporators,
§15-4-503.

Amendment, §15-4-511.

Filing of articles of amendment,
§15-4-511.

Fee, §15-4-512.

Contents, §15-4-502.

Correction of errors, §15-4-508.

Filing, §15-4-505.

Corrected articles of incorporation,
§15-4-508.

Fee, §15-4-512.

Purposes of incorporation.

Articles to state, §15-4-502.

Signatures, §15-4-503.

Signing and acknowledgment,
§15-4-505.

Authorized, §15-4-501.**Bond issues.**

Authorized investments, §15-4-523.

Retirement systems, §15-4-523.

Excess funds, §15-4-520.

Interest, §15-4-517.

Investment in, §15-4-523.

Retirement systems, §15-4-523.

Issuance of bonds, §15-4-517.

Powers of corporations, §15-4-509.

Refunding bonds, §15-4-522.

Sale of obligations, §15-4-521.

Use of proceeds, §15-4-521.

Security, §15-4-518.

Tax exemption, §15-4-524.

Terms of bonds, §15-4-517.

Bylaws.

Powers as to, §15-4-509.

Vested in board of directors,
§15-4-510.

Certificate of incorporation.

Evidentiary effect, §15-4-506.

Issuance, §15-4-506.

Fee, §15-4-512.

INDUSTRIAL DEVELOPMENT CORPORATIONS —Cont'd

Commencement of corporate existence, §15-4-506.

County and regional industrial development companies, §§15-4-1201 to 15-4-1228.

Debt.

Authorized indebtedness, §15-4-514.

Exemption from Arkansas securities act, §15-4-515.

Priority, §15-4-513.

Dissolution, §15-4-525.

Certificate of dissolution.

Effect, §15-4-525.

Issuance, §15-4-525.

Filing of articles of dissolution, §15-4-525.

Fee, §15-4-512.

First meeting of incorporators, §15-4-507.

Notice, §15-4-507.

Income tax exemptions, §15-4-524.

Membership in county or regional company, §§15-4-1217 to 15-4-1219.

Nonprofit operation, §15-4-513.

Notice.

First meeting of incorporators, §15-4-507.

Number of incorporators, §15-4-501.

Powers, §15-4-509.

Refunding bonds, §15-4-522.

Secretary of state.

Filing charges, §15-4-512.

Securities act exemption, §15-4-515.

Taxation.

Exemptions, §15-4-524.

INFORMATION AGE

COMMUNITIES COMMISSION,

§§15-9-101 to 15-9-105.

Citation of act, §15-9-101.

Composition, §15-9-104.

Definition of "communities," §15-9-102.

Duties, §15-9-105.

Established, §15-9-104.

Legislative declaration, §15-9-103.

Meetings, §15-9-104.

Powers, §15-9-105.

Reports, §15-9-104.

Title of act, §15-9-101.

INJUNCTIONS.

Amendment 82 bonds.

Contractual obligations of state.

Enforcement by injunction, §15-4-3218.

INJUNCTIONS —Cont'd

Brine production.

Against commission, §15-76-305.

By commission, §15-76-304.

Capital development companies.

Power of commissioners, §15-4-1028.

Conservation easements.

Enforcement, §15-20-409.

Game and fish.

Timber cut on lands belonging to game and fish commission.

Actions for enjoyment of timber cutting until environmental impact statement filed, §15-41-108.

Liquefied petroleum gas.

Actions for injunctions against violation, §15-75-104.

Nuclear power, §15-10-306.

Oil and gas.

Against commission, §15-72-106.

Notice, §15-72-107.

Enforcement of provisions, §15-72-108.

Unlawful disposal of salt water, §15-76-202.

Rivers.

Natural and scenic rivers system.

Violations of provisions, §15-23-313.

Surface coal mining and reclamation.

Civil enforcement, §15-58-308.

INSPECTIONS.

Liquefied petroleum gas.

Containers, §15-75-404.

Fees.

Schedule of inspection fees, §15-75-105.

Right of entry, §15-75-209.

Surface coal mining and reclamation, §15-58-205.

INTEREST.

Bond issues.

Amendment 82 bonds, §15-4-3209.

Development finance corporations.

Exemption of interest and obligations from certain taxes, §15-4-925.

Capital development companies.

Bond issues.

Exemption from income tax, §15-4-1025.

Construction assistance revolving loan fund.

Interest rates on loans, §15-5-910.

INTEREST —Cont'd**Development finance corporations.**

Bond issues.

Exemption of interest and obligations from certain taxes, §15-4-925.

Game and fish.

Game protection fund, §15-41-110.

Oil and gas.

Proceeds.

Delinquent payment, §15-74-601.

Safe drinking water fund.

Interest on loans, §15-22-1112.

Water pollution abatement facilities bonds.

Interest payable, §15-20-1304.

Water resources development.

Bond issues, §15-22-610.

INTERPLEADER AND INTERVENTION.**Oil and gas.**

Partition of oil and gas lease interests, §15-73-404.

INTERSTATE COMPACTS.**Energy.**

Southern states energy compact, §§15-10-401 to 15-10-404.

Fires and fire prevention.

South central interstate forest fire protection compact, §§15-33-101 to 15-33-103.

Flood control.

Power of soil and water commission to enter into, §15-24-106.

Forest fires.

South central interstate forest fire protection compact, §§15-33-101 to 15-33-103.

Oil and gas.

Interstate compact to conserve oil and gas, §§15-72-901 to 15-72-904.

Red river compact, §§15-23-501 to 15-23-503.**Rivers.**

Arkansas river basin compact, §15-23-401.

Natural and scenic rivers system.

Proposed compacts with federal government.

Approval of general assembly required, §15-23-310.

Southern states energy compact, §§15-10-401 to 15-10-404.**INTOXICATION.****Hunting accidents.**

Implied consent to chemical test, §15-42-127.

INVENTIONS.**Assistance to inventors, §§15-4-1401 to 15-4-1408.****Board of trustees of University of Arkansas.**

Authority, §15-4-1404.

Prototype development center.

Establishment, §15-4-1403.

Citation of subchapter, §15-4-1401.**Contracts for product development, §15-4-1407.****Definitions, §15-4-1402.****Economic development incentive, §§15-4-1601 to 15-4-1609.****Inventors assistance program.**

Fund, §15-4-1408.

Objectives, §15-4-1403.

Product development, §15-4-1407.**Proposals or inventions.**

Review of proposals, §15-4-1406.

Fees, §15-4-1406.

Prototype development center.

Annual report to governor, §15-4-1405.

Authority to establish, §15-4-1403.

Product development, §15-4-1407.

Review of proposals, §15-4-1406.

Title of subchapter, §15-4-1401.**University of Arkansas.**

Board of trustees.

Authority, §15-4-1404.

Prototype development center.

Establishment, §15-4-1403.

Prototype development center.

Annual report to governor,

§15-4-1405.

Establishment, §15-4-1403.

Product development, §15-4-1407.

Review of proposals, §15-4-1406.

INVENTORS ASSISTANCE ACT.**Assistance to inventors.**

General provisions, §§15-4-1401 to 15-4-1408.

INVESTIGATIONS.**Development finance corporations.**

Final investigation and approval by board, §15-4-912.

Preliminary investigation, §15-4-908.

Explosions.

Liquefied petroleum gas, §15-75-209.

Geological survey.

Expenses shared by state and United States, §15-55-211.

Industrial development.

County and regional industrial development companies, §15-4-1228.

INVESTIGATIONS —Cont'd**Liquefied petroleum gas.**

Explosions, §15-75-209.

Oil and gas.

Commission.

Powers of commission, §15-71-110.

Secondary recovery methods,
§15-72-502.Submission of findings to
landowners, §15-72-503.**INVESTMENTS.****Arkansas research alliance act,**
§§15-3-301 to 15-3-306.**Bond issues.**

Amendment 82 bonds.

Investment of bond proceeds,
§15-4-3213.**Capital development companies.**Eligibility for certain investments,
§15-4-1024.

Policies, §15-4-1027.

Report on transactions, §15-4-1028.

Development finance authority.

Bond issues.

Authorized investors, §15-5-305.

Power of authority to make, §15-5-713.

Development finance corporations.Eligibility for certain investments,
§15-4-924.**Equity investment incentives,**

§§15-4-3301 to 15-4-3306.

Industrial development.County and regional industrial
development companies.

Bonds and notes.

Eligibility for certain investments,
§15-4-1222.**Mines and minerals.**

Lease of mineral rights.

Life tenants.

Trustee under control of court.

Funds, §15-56-406.

Risk capital matching fund,

§§15-5-1601 to 15-5-1609.

Science and technology authority.

Endowment fund assets, §15-3-119.

Investment fund, §15-3-120.

Authorized uses, §15-3-121.

Purchase of qualified securities,
§15-3-122.Powers and duties of authority,
§15-3-108.**Small businesses.**Development finance authority,
§15-5-713.**Steel manufacturers tax incentives,**

§§15-4-2401 to 15-4-2407.

INVESTMENTS —Cont'd**Venture capital investment,**
§§15-5-1401 to 15-5-1409.**Water resources development.**

Bond issues.

Legal investment, §15-22-617.

Funds created under act, §15-22-620.

INVESTMENT TAX INCENTIVES,
§15-4-2706.-**IRRIGATION.****Bonds to finance systems.**Water resources bonds generally,
§§15-22-1301 to 15-22-1313.**J****JOB CREATION.****Consolidated incentive act of 2003,**
§§15-4-2701 to 15-4-2714.**JOB-CREATION TAX CREDIT,**
§15-4-2705.**JOINT TENANTS AND TENANTS IN
COMMON.****Life tenants.**Lease of mineral rights, §§15-56-401 to
15-56-409.**JUDGMENTS AND DECREES.****Orders.**

State lands.

Unlawful cutting or removal.

Disposition of logs under
judgment, §15-32-306.**JURISDICTION.****Brine production.**

Oil and gas commission, §15-76-306.

Mines and minerals.

Lease of mineral rights.

In rem proceedings against unleased
interest in minerals, §15-56-310.**Surface coal mining and
reclamation.**Department of environmental quality,
§15-58-201.**K****KEEP ARKANSAS BEAUTIFUL
COMMISSION,** §§15-11-601 to
15-11-604.**Creation,** §15-11-601.**Office,** §15-11-602.**Powers and duties,** §15-11-603.

Transfer, §15-11-604.

KINGS RIVER.**Pollution.**

Existing rights and duties.

Effect, §15-23-104.

Legislative findings, §15-23-104.

Prohibited acts, §15-23-104.

Saving clause, §15-23-104.

L**LAND APPLICATION OF
LIVESTOCK AND POULTRY
LITTER.****Poultry feeding operations.**

Registration, §§15-20-901 to 15-20-906.

**Soil nutrient application and
poultry litter utilization.**

General provisions, §§15-20-1101 to
15-20-1114.

**Soil nutrient management planners
and applicators.**

Certification, §§15-20-1001 to
15-20-1008.

**Surplus nutrient removal incentives,
§§15-20-1201 to 15-20-1206.****LANDLORD AND TENANT.****Mines and minerals.**

Lease of mineral rights.

Life tenants, §§15-56-401 to
15-56-409.

LAW ENFORCEMENT OFFICERS.**State parks division officers.**

Award of pistol upon retirement,
§15-11-210.

LEASES.**Churches.**

Oil, gas and mineral interests,
§15-73-202.

Eleemosynary institutions.

Oil, gas and mineral interests,
§15-73-202.

Forfeitures.

Oil and gas.

Lease of oil, gas and mineral
interests.

Forfeiture of leases generally,
§§15-73-203 to 15-73-205.

Life estates.

Oil, gas and mineral interests,
§§15-73-301 to 15-73-309.

Lodges and societies.

Oil, gas and mineral interests,
§15-73-202.

Mines and minerals.

Lease of mineral rights, §§15-56-301 to
15-56-409.

LEASES —Cont'd**Mines and minerals —Cont'd**

Oil and gas.

Lease of oil, gas and mineral
interests, §§15-73-201 to
15-73-309.

Partition of oil and gas lease
interests, §§15-73-401 to
15-73-409.

Short line railroads, §15-56-502.

Oil and gas.

Lease of oil, gas and mineral interests,
§§15-73-201 to 15-73-309.

Partition of oil and gas lease interests,
§§15-73-401 to 15-73-409.

Royalties.

Oil, gas and mineral interests.

Life estates, §15-73-304.

LEE CREEK.

Development, §15-23-103.

LEGISLATIVE COUNCIL.**Development finance authority.**

Approval of legislative council for
certain matters, §15-5-212.

LEVEE DISTRICTS.**Flood control.**

Rights of districts unaffected,
§15-24-104.

LICENSES AND PERMITS.**Brine production.**

Drilling permits, §15-76-318.

**Dam construction, §§15-22-210 to
15-22-214.****Game and fish.**

Wildlife habitat conservation on
private lands.

Licensing agreements, §15-45-101.

Natural resources commission.

Dam construction, §§15-22-210 to
15-22-214.

Nuclear power.

United States licenses or permits
required, §15-10-303.

Injunctions, §15-10-306.

Seismic operations.

Required for field seismic operations,
§15-71-114.

LIENS.**Oil and gas.**

Integration of production and drilling
units.

Operator's lien, §15-72-312.

Salt water disposal units,
§15-72-320.

LIENS —Cont'd**Oil and gas —Cont'd****Wells.**

- Plugging dry or abandoned wells.
- Right of another to plug well,
§15-72-218.
- Surface owner's liens for damages,
§15-72-213.
- Wild or out of control wells.
- Action by commission to control
well.
- Lien on well to recover
expenses, §15-72-212.

Small businesses.

- Stimulating small business growth.
- Bond issues.
- Lien as security, §15-4-411.

**Surface coal mining and
reclamation, §15-58-404.****Trees and timber.**

- Measuring and marking logs.
- Prize logs.
- Lien for driving when
intermingled with marked
logs, §15-32-408.

Water resources bonds.

- Pledge, §15-22-1309.

LIFE ESTATES.**Leases.**

- Oil, gas and mineral interests,
§§15-73-301 to 15-73-309.

Mines and minerals.

- Lease of mineral rights.
- Life tenants, §§15-56-401 to
15-56-409.

Oil and gas.

- Lease of oil, gas and mineral interests,
§§15-73-301 to 15-73-309.

LIGNITE DEVELOPMENT,

- §§15-55-401 to 15-55-405.

**Arkansas lignite resources pilot
program, §15-55-403.****Legislative findings, §15-55-402.****Participation in other grant
programs, §15-55-404.****Reporting requirements, §15-55-405.****Short title, §15-55-401.****LIMITATION OF ACTIONS.****Mines and minerals.**

- Claims on public lands.
- Actions against claimants,
§15-56-204.

LIQUEFIED PETROLEUM GAS.**Additional standards by board,**

- §15-75-208.
- Inclusion in state code, §15-75-208.

LIQUEFIED PETROLEUM GAS**—Cont'd****Affidavits.**

- Containers bearing owner's
identification.
- Unlawful use of containers,
§15-75-406.

**Affirmative defenses of providers,
§15-75-112.****Attorneys at law.**

- Director.
- Employment of counsel, §15-75-206.

Board.

- Additional standards for containers,
§15-75-208.
- Inclusion in state code, §15-75-208.
- Appointment, §15-75-201.
- Citation of subchapter, §15-75-101.
- Compensation, §15-75-201.
- Composition, §15-75-201.
- Definitions, §15-75-102.
- Director.

- Appointment, §15-75-206.
- Employment, §15-75-206.
- Expenses of members, §15-75-201.
- Explosions.
- Investigations, §15-75-209.
- Inspections.
- Right of entry, §15-75-209.
- Investigations.
- Explosions, §15-75-209.
- Meetings, §15-75-202.
- Oath of office, §15-75-201.
- Office, §15-75-203.
- Officers, §15-75-204.
- Qualifications of members, §15-75-201.
- Right of entry.
- Inspections, §15-75-209.
- Rules and regulations, §15-75-207.
- Existing regulations continued in
force, §15-75-207.
- Powers of board, §15-75-207.
- Seal, §15-75-203.
- Subpoenas, §15-75-321.
- Tenure of office, §15-75-204.
- Terms of office, §15-75-201.
- Title of subchapter, §15-75-101.

Certification.

- Certificates of competency.
- Defined, §15-75-301.
- Qualifications, §15-75-304.
- Required, §15-75-303.
- Revocation, §15-75-321.
- Suspension of certificate, §15-75-321.
- Training courses, §15-75-304.
- Required, §15-75-305.

LIQUEFIED PETROLEUM GAS

—Cont'd

Certification —Cont'd

Handlers, §15-75-303.

Containers or cylinders.

Exception to requirement,
§15-75-303.

Installers, §15-75-303.

Recertification.

Absence from business more than
one year, §15-75-304.**Citation of law**, §15-75-101.**Containers.**

Bearing owner's identification.

Defacing or obliterating marks
unlawful, §15-75-406.

Definitions, §15-75-406.

Filling, §15-75-406.

Refilling, §15-75-406.

Sale, §15-75-406.

Use of container without consent of
owner, §15-75-406.

Vandalism.

Defacing or obliterating marks
unlawful, §15-75-406.

Butane containers.

Strength, §15-75-402.

Definitions.

Containers bearing owner's
identification.

"Owner" and "person," §15-75-406.

Filling of container of another's
company during emergency,
§15-75-406.

Inspections, §15-75-404.

Right of entry, §15-75-209.

Investigation of explosions,
§15-75-209.

Propane containers.

Strength, §15-75-403.

Reports, §15-75-110.

Right of entry.

Inspections, §15-75-209.

Strength.

Butane container, §15-75-402.

Propane containers, §15-75-403.

Use of container without owner's
consent, §15-75-406.Use of unapproved containers and
systems prohibited, §15-75-405.

Vapor pressure, §15-75-401.

Credit balances.

Account statements.

Retail sellers to furnish to
customers.Board to furnish copies of act to
dealers, §15-75-407.**LIQUEFIED PETROLEUM GAS**

—Cont'd

Credit balances —Cont'd

Account statements —Cont'd

Retail sellers to furnish to customers
—Cont'd

Failure to comply with provisions.

Revocation or suspension of
license, §15-75-407.

Statements showing balance.

Retail sellers to furnish
customers, §15-75-407.**Definitions**, §15-75-102.

Containers.

Bearing owner's identification.

"Owner" and "person," §15-75-406.

Director.

Attorneys at law.

Employment of counsel, §15-75-206.

Counsel, §15-75-206.

Detached from department of
commerce, §15-75-206.

Personnel.

Employment, §15-75-206.

Emergencies.Filling of container of another's
company during emergency,
§15-75-406.

Shortage emergencies, §15-75-322.

Employees.

Dealers.

Safety meetings for employees,
§15-75-108.**Evidence.**Containers bearing owner's
identification.Unlawful use of containers,
§15-75-406.**Examinations.**Certification of handlers and
installers, §15-75-303.**Explosions.**

Investigations, §15-75-209.

Fees.Credited towards liquefied petroleum
gas fund, §15-75-106.Deposited in state treasury,
§15-75-106.Schedule of inspection and registration
fees, §15-75-105.Suspension of inspection and
registration fees, §15-75-111.

Use, §15-75-106.

Fine.

Civil penalty, §15-75-323.

LIQUEFIED PETROLEUM GAS

—Cont'd

Fund.

- Liquefied petroleum gas fund,
§15-75-106.
- Fines, penalties, forfeitures and
money.
- Credited towards, §15-75-321.

Handlers.

- Certification, §15-75-303.
- Containers or cylinders.
- Exception to requirement,
§15-75-303.

Injunctions.

- Actions for injunctions against
violation, §15-75-104.

Inspections.

- Containers, §15-75-404.
- Fees.
- Payment, §15-75-318.
- Schedule of inspection fees,
§15-75-105.
- Right of entry, §15-75-209.

Installers.

- Certification, §15-75-303.

Investigations.

- Explosions, §15-75-209.

Liquefied petroleum gas fund,
§15-75-106.

- Credits to fund, §15-75-321.

Meetings.

- Dealers.
- Safety meetings with employees,
§15-75-108.
- Quorum, §15-75-202.

Odorization of gas, §15-75-107.**Penalties.**

- Civil penalty, §15-75-323.
- Criminal penalty, §15-75-103.
- Disposition of fines, penalties,
forfeitures and moneys,
§15-75-321.

Permits.

- Application, §15-75-305.
- Approval prerequisite to supplying or
acquiring certain equipment and
products, §15-75-317.
- Area restrictions in permits,
§15-75-320.
- Branch permits, §15-75-320.
- Class one permit, §15-75-307.
- New application upon lapse of
approval time, §15-75-324.
- Class two permit, §15-75-308.
- Class three permit, §15-75-309.
- Class four permit, §15-75-310.
- Class five permit, §15-75-311.
- Class six permit, §15-75-312.

LIQUEFIED PETROLEUM GAS

—Cont'd

Permits —Cont'd

- Class seven permit, §15-75-313.
- Class eight permit, §15-75-314.
- Class nine permit, §15-75-315.
- Class ten permit, §15-75-316.
- Defined, §15-75-301.
- Fees.
- Payment, §15-75-318.
- Issuance, §15-75-306.
- Qualifications of applicant, §15-75-305.
- Reinstatement, §15-75-319.
- Renewal, §15-75-302.
- Required, §15-75-302.
- Revocation, §15-75-321.
- Automatic revocation upon
suspension of business,
§15-75-319.
- Transfer, §15-75-319.
- Approval required, §15-75-319.

Registration.

- Schedule of registration fees,
§15-75-105.

Reports, §15-75-110.**Right of entry.**

- Inspections, §15-75-209.

Rules and regulations.

- Board, §15-75-207.
- Existing regulations continued in
force, §15-75-207.
- Powers of board, §15-75-207.

Safety meetings for employees,
§15-75-108.**Sales.**

- Area restrictions in permits,
§15-75-320.
- Branch permits, §15-75-320.
- Containers bearing owner's
identification, §15-75-406.
- Expansion of operations area,
§15-75-320.
- Restrictions, §15-75-320.
- Service personnel required,
§15-75-320.

Searches and seizures.

- Containers bearing owner's
identification.
- Unlawful use of containers.
- Search warrants, §15-75-406.

Shortage emergencies, §15-75-322.**Suspension of business.**

- Automatic revocation of permit,
§15-75-319.

Systems.

- Use of unapproved containers and
systems prohibited, §15-75-405.

Title of law, §15-75-101.

LIQUEFIED PETROLEUM GAS

—Cont'd

Training courses.

Certification requirements, §15-75-304.

Required, §15-75-305.

Use of container without consent of owner, §15-75-406.

Affidavit of unlawful use, §15-75-406.

Evidence of unlawful use, §15-75-406.

Misdemeanors.

Violation of provisions, §15-75-406.

Return to owner, §15-75-406.

Search warrants, §15-75-406.

Violation of provisions, §15-75-406.

Vandalism.

Containers bearing owner's identification.

Defacing or obliterating marks unlawful, §15-75-406.

Warnings.

Odorization of gas, §15-75-107.

LITTER CONTROL.**Poultry feeding operations.**

Registration with natural resources commission, §§15-20-901 to 15-20-906.

Soil nutrient application and poultry litter utilization.

General provisions, §§15-20-1101 to 15-20-1114.

Soil nutrient management planners and applicators.

Certification, §§15-20-1001 to 15-20-1008.

Surplus nutrient removal incentives, §§15-20-1201 to 15-20-1206.**LITTLE RIVER WATERSHED.****Mountain fork.**

Nutrient surplus areas.

Areas declared, §15-20-1104.

LITTLE SUGAR CREEK WATERSHED.**Nutrient surplus areas.**

Areas declared, §15-20-1104.

LIVESTOCK.**Litter management.**

Soil nutrient application and poultry litter utilization.

Regulation, §§15-20-1101 to 15-20-1114.

Soil nutrient management planners and applicators.

Certification, §§15-20-1001 to 15-20-1008.

Surplus nutrient removal incentives, §§15-20-1201 to 15-20-1206.

LIVESTOCK —Cont'd**Soil nutrient management planners and applicators.**

Certification, §§15-20-1001 to 15-20-1008.

Waste management.

Soil nutrient application and poultry litter utilization.

Regulation, §§15-20-1101 to 15-20-1114.

Soil nutrient management planners and applicators.

Certification, §§15-20-1001 to 15-20-1008.

Surplus nutrient removal incentives, §§15-20-1201 to 15-20-1206.

LIVESTOCK WASTE MANAGEMENT.**Soil nutrient application and poultry litter utilization.**

General provisions, §§15-20-1101 to 15-20-1114.

Soil nutrient management planners and applicators.

Certification, §§15-20-1001 to 15-20-1008.

Surplus nutrient removal incentives, §§15-20-1201 to 15-20-1206.**LOANS.****Brownfield revolving loan fund, §§15-5-1501 to 15-5-1511.****Capital development companies.**

Policies generally, §15-4-1027.

Construction assistance revolving loan fund.

Forgiveness of principal of loans, §15-5-907.

Interest rates on loans, §15-5-910.

Development finance corporations.

Policies generally, §15-4-926.

Industrial development.

County and regional industrial development companies.

Loan policy, §15-4-1225.

Member financial institutions.

Loan limits, §15-4-1218.

Safe drinking water fund.

Interest on loans, §15-22-1112.

Silent water conservation commission.

Failure of city, town, etc., to repair loan or fee, §15-20-208.

Small businesses.

Development finance authority.

Funding or guarantee of loans, §15-5-705.

Application, §15-5-708.

Review, §15-5-709.

LOANS —Cont'd**Small businesses —Cont'd**

- Development finance authority
—Cont'd
 - Power to make loans, §15-5-712.
- Loan collaboration program,
 - §§15-4-2501 to 15-4-2506.
- Definitions, §15-4-2501.
- Duty to seek collaboration,
 - §15-4-2505.
- Lender application, approval,
 - §15-4-2503.
- Supporting documents,
 - §15-4-2504.
- Regulations.
 - Promulgation of, §15-4-2506.
- Subsidy of loan, §15-4-2502.

LOCAL GOVERNMENTS.**Major industry facilities incentive,**
§§15-4-1801 to 15-4-1811.**LODGES AND SOCIETIES.****Leases.**

- Oil, gas and mineral interests,
 - §15-73-202.

Oil and gas.

- Lease of oil, gas and mineral interests,
 - §15-73-202.

M**MAJOR INDUSTRY FACILITIES****INCENTIVE, §§15-4-1801 to**
15-4-1811.**Application for assistance,**
§15-4-1803.

- Approval, §15-4-1807.
- Contents, §15-4-1804.
- Determination of eligibility,
 - §15-4-1806.
- Generally, §15-4-1803.
- Hearings, §15-4-1805.

Citation of act, §15-4-1801.**Contents of assistance applications,**
§15-4-1804.**Creation of incentive fund,**
§15-4-1808.**Definitions, §15-4-1802.****Eligibility.**

- Determination of, §15-4-1806.

Funds, §15-4-1808.**Hearings.**

- Applications, §15-4-1805.

Payments, §15-4-1809.**Pledge of state revenues, §15-4-1811.****State assistance, §15-4-1807.**

- Payments, §15-4-1809.

MAJOR INDUSTRY FACILITIES**INCENTIVE —Cont'd****State board of finance.**

- Application for assistance, §15-4-1803.
- Approval of applications.
 - Amount of state assistance,
 - §15-4-1807.

State revenues, §15-4-1811.**Suspension of local tax, §15-4-1810.****Taxation.**

- Suspension of local tax, §15-4-1810.

Title of act, §15-4-1801.**MANURE.****Poultry feeding operations.**

- Registration with natural resources
commission, §§15-20-901 to
15-20-906.

**Soil nutrient application and
poultry litter utilization.**

- General provisions, §§15-20-1101 to
15-20-1114.

**Soil nutrient management planners
and applicators.**

- Certification, §§15-20-1001 to
15-20-1008.

Surplus nutrient removal incentives,
§§15-20-1201 to 15-20-1206.**MAPS AND PLATS.****Coordinate system, §§15-21-301 to**
15-21-310.**MARKETING.****Groundwater.**

- Rights, §15-22-911.

MEDICAL CORPORATIONS.**Incentives to do business in this
state, §15-3-135.****Promotion of scientific, medical and
technological jobs and
infrastructure enhancements,**
§15-3-135.**MERCURY REFINERS AND
BUSINESSES.****County clerks.**

- Licenses.
 - Applications and licenses recorded
by clerk, §15-60-109.

Cumulative nature of act, §15-60-101.**Licenses.**

- Act cumulative, §15-60-101.
- Applications, §15-60-104.
 - Contents, §15-60-104.
- False statements in applications.
 - Forfeiture of license, §15-60-114.
 - Misdemeanors, §15-60-114.
- Misdemeanors.
 - False statements in applications,
 - §15-60-114.

MERCURY REFINERS AND BUSINESSES —Cont'd

Licenses —Cont'd

Applications —Cont'd

Processing fees paid to clerk and sheriff, §15-60-110.

Recordation, §15-60-109.

Contents, §15-60-105.

County clerk.

Applications and licenses recorded by clerk, §15-60-109.

Cumulative nature of act, §15-60-101.

Expiration dates, §15-60-108.

Fines paid into county general fund, §15-60-115.

Forfeiture of license, §15-60-114.

False statements in applications, §15-60-114.

Issuance, §15-60-108.

Tax payment receipts.

Exhibition before issuance of license, §15-60-107.

Names and addresses, §15-60-105.

Necessary to engage in business, §15-60-103.

Recordation, §15-60-109.

Required, §15-60-103.

Taxes, §15-60-106.

Amount, §15-60-106.

Paid into county general fund, §15-60-115.

Privilege of engaging in business granted by license tax, §15-60-106.

Purchasing for resale, §15-60-106.

Receipt for payment.

Exhibited before issuance of license, §15-60-107.

Privilege of engaging in business granted by license tax, §15-60-106.

Records.

Forfeiture of license, §15-60-114.

Inspections.

Records open for inspection, §15-60-113.

Failure to preserve records or permit inspections, §15-60-114.

Misdemeanors.

Failure to permit inspection, §15-60-114.

Failure to preserve records, §15-60-114.

Ore refiners and purchasers, §15-60-111.

Purchasers of refined mercury for resale, §15-60-112.

MERCURY REFINERS AND BUSINESSES —Cont'd

Records —Cont'd

Refined mercury.

Purchasers of refined mercury for resale, §15-60-112.

Retained for three years, §15-60-113.

Failure to preserve records, §15-60-114.

Misdemeanors, §15-60-114.

MERGER OR CONSOLIDATION.

Capital development corporations, §15-4-1030.

METERS.

Sparta aquifer critical groundwater counties.

Registered water users.

Requirement of meter, §15-22-1216.

Tampering with meter.

Criminal penalties, §15-22-1217.

MILITARY.

Fishing.

Licenses.

Resident on active duty entitled to free license, §15-42-123.

Hunting.

Licenses.

Resident on active duty entitled to free license, §15-42-123.

MINES AND MINERALS.

Accounts and accounting.

Lease of mineral rights.

Discharge of receiver, §15-56-308.

Affidavits.

Claims on public lands.

Assessment work, §15-56-203.

Appeals.

Lease of mineral rights.

Validity of lessee's title, §15-56-302.

Assessments.

Claims on public lands.

Affidavit of assessment work, §15-56-203.

Bonds, surety.

Lease of mineral rights.

Life tenants.

Trustee under control of court, §15-56-406.

Claims on public lands.

Affidavits.

Assessment work, §15-56-203.

Assessment work.

Affidavits, §15-56-203.

Indexed record book required.

Failure or refusal of recorder to keep index, §15-56-205.

MINES AND MINERALS —Cont'd**Claims on public lands —Cont'd**

Limitation of actions.

Actions against claimant,
§15-56-204.

Penalties.

Failure or refusal of recorder to keep
index, §15-56-205.

Possessory right to claim.

Establishment, §15-56-204.

Recordation, §15-56-201.

Ex officio recorders, §15-56-201.

Fees, §15-56-202.

Indexed record book required,
§15-56-205.

Misdemeanors.

Failure or refusal of recorder to
keep index, §15-56-205.

Penalties.

Failure or refusal of recorder to
keep index, §15-56-205.

Record books, §15-56-205.

Coal.

Short line railroads, §§15-56-501 to
15-56-505.

Surface coal mining and reclamation,
§§15-58-101 to 15-58-510.

Common carriers.

Short line railroads.

Rights, powers and privileges of
common carrier, §15-56-503.

Definitions.

Lease of mineral rights.

Mineral, §15-56-301.

Eminent domain.

Short line railroads, §15-56-502.

Executions.

Lease of mineral rights.

Agreement subsequent to discharge
of receiver, §15-56-309.

Fees.

Claims on public lands.

Recordation, §15-56-202.

Freedom of information.

Claims on public lands.

Record book.

Right to examine, §15-56-205.

Gravel.

Mining of gravel or other materials
from streams or streambeds.

Open-cut land reclamation,
§§15-57-310 to 15-57-320.

Hearings.

Lease of mineral rights.

Life tenants.

Petitions to lease, §15-56-409.

**MINES AND MINERALS —Cont'd
Indexes.**

Claims on public lands.

Record books.

Failure or refusal of recorder to
keep index, §15-56-205.

Indexed record book required,
§15-56-205.

Investments.

Lease of mineral rights.

Life tenants.

Trustee under control of court.

Funds, §15-56-406.

Jurisdiction.

Lease of mineral rights.

In rem proceedings against unleased
interest in minerals, §15-56-310.

Landlord and tenant.

Life tenants.

Lease of mineral rights, §§15-56-401
to 15-56-409.

Lease of mineral rights.

Appeals.

Validity of lessee's title, §15-56-302.

Definitions.

Mineral, §15-56-301.

Executions.

Agreements subsequent to discharge
of receiver, §15-56-309.

Failure of lessee to report output,
§15-56-311.

Felonies, §15-56-311.

Investments.

Lease by life tenant.

Trustee under control of court.

Funds, §15-56-406.

Jurisdiction.

Unleased interest in minerals.

In rem proceedings against
unleased interest, §15-56-310.

Life tenants.

Applicability of provisions.

Exception from application of act,
§15-56-401.

Authorization for lease of life estate,
§15-56-402.

Confirmation of lease by court,
§15-56-407.

Determination by court, §15-56-404.

Effect of confirmation, §15-56-407.

Exception from application of act,
§15-56-401.

Hearings.

Petitions to lease, §15-56-409.

Investments.

Trustee under control of court,
§15-56-406.

MINES AND MINERALS —Cont'd**Lease of mineral rights —Cont'd**

Life tenants —Cont'd

Orders.

Authorizing execution of lease,
§15-56-405.

Confirming lease.

Divests title of contingent
remaindermen, §15-56-408.

Persons with life estates authorized
to lease interests, §15-56-402.

Petitions to lease, §15-56-403.

Determination by court,
§15-56-404.

Hearings on petitions, §15-56-409.

Remainders, reversions and
executory interests.

Title of contingent remaindermen.

Divested by order confirming
lease, §15-56-408.

Trustee for interests of
remaindermen, §15-56-405.

Royalties, §15-56-405.

Proportionate part vested in life
tenant, §15-56-405.

Service of process, §15-56-409.

Upon respondents, §15-56-409.

Trusts and trustees.

Trustee for interests of
remaindermen, §15-56-405.

Trustee under control of court,
§15-56-406.

Accounts and accounting,
§15-56-406.

Additional bond, §15-56-406.

Bonds, surety, §15-56-406.

Compensation, §15-56-406.

Investment of funds, §15-56-406.

Removal or resignation,
§15-56-406.

Reports, §15-56-406.

Successor, §15-56-406.

Orders.

Life tenants.

Order authorizing execution of
lease, §15-56-405.

Order confirming lease.

Title of contingent
remaindermen divested,
§15-56-408.

Parties.

Parties in interest, §15-56-303.

Right to appear or intervene,
§15-56-303.

Persons authorized to lease or operate,
§15-56-301.

Petitions.

Contents, §15-56-304.

Life tenants, §15-56-403.

MINES AND MINERALS —Cont'd**Lease of mineral rights —Cont'd**

Petitions —Cont'd

Filing, §15-56-304.

Life tenants, §15-56-403.

Contents, §15-56-403.

Hearing on petition, §15-56-409.

Necessary parties, §15-56-304.

Parties defendant, §15-56-304.

Receivers.

Accounts and accounting.

Discharge of receiver, §15-56-308.

Appointment, §15-56-305.

Authority, §15-56-305.

Discharge of receiver, §15-56-308.

Accounts and accounting,
§15-56-308.

Execution of agreements,
§15-56-309.

Pro rata payment of proceeds,
§15-56-305.

Reports.

Binding upon approval, §15-56-306.

Failure of lessee to report output,
§15-56-311.

Felonies, §15-56-311.

Leases reported to court, §15-56-306.

Binding upon approval,
§15-56-306.

Royalties.

Life tenants, §15-56-405.

Proportionate part of royalties
vested in life tenant,
§15-56-405.

Sale of lands or mineral rights.

Leases unaffected by sale,
§15-56-307.

Summons and process, §15-56-302.

Issuance and service, §15-56-302.

Unaffected by sale of lands or mineral
rights, §15-56-307.

Validity of lessee's title.

Appeals, §15-56-302.

Who may lease or operate, §15-56-301.

Word "mineral" defined, §15-56-301.

Leases.

Lease of mineral rights, §§15-56-301 to
15-56-409.

Oil and gas.

Lease of oil, gas and mineral
interests, §§15-73-201 to
15-73-309.

Partition of oil and gas lease
interests, §§15-73-401 to
15-73-409.

Short line railroads, §15-56-502.

MINES AND MINERALS —Cont'd**Life estates.**

- Lease of mineral rights.
- Life tenants, §§15-56-401 to 15-56-409.

Limitation of actions.

- Claims on public lands.
- Actions against claimants, §15-56-204.

Oil and gas.

- Lease of oil, gas and mineral interests, §§15-73-201 to 15-73-309.
- Underground storage of gas generally, §§15-72-601 to 15-72-608.

Open cut land reclamation.

- Surface coal mining and reclamation generally, §§15-58-101 to 15-58-510.

Orders.

- Lease of mineral rights.
- Life tenants.
- Order authorizing execution of lease, §15-56-405.
- Title of contingent remaindermen divested.
- By order confirming lease, §15-56-408.

Parties.

- Lease of mineral rights.
- Parties in interest, §15-56-303.
- Right to appear or intervene, §15-56-303.

Petitions.

- Lease of mineral rights.
- Contents, §15-56-304.
- Life tenants, §15-56-403.
- Filing, §15-56-304.
- Life tenants, §15-56-403.
- Contents, §15-56-403.
- Hearing on petition, §15-56-409.
- Necessary parties, §15-56-304.
- Parties defendant, §15-56-304.

Quarry operation, reclamation and safe closure act, §§15-57-401 to 15-57-414.**Railroads.**

- Operation of railways by owners of mineral lands, §§15-56-501 to 15-56-505.
- Short line railroads, §§15-56-501 to 15-56-505.

Remainders, reversions and executory interests.

- Lease of mineral rights.
- Life tenants.
- Title of contingent remaindermen.
- Divested by order confirming lease, §15-56-408.

MINES AND MINERALS —Cont'd**Remainders, reversions and executory interests —Cont'd**

- Lease of mineral rights —Cont'd
- Life tenants —Cont'd
- Trustee for interests of remaindermen, §15-56-405.

Reports.

- Lease of mineral rights.
- Failure of lessee to report output, §15-56-311.
- Felonies, §15-56-311.
- Leases reported to court, §15-56-306.
- Binding upon approval, §15-56-306.

Rights of way.

- Short line railroads, §15-56-502.

Royalties.

- Lease of mineral rights.
- Life tenants, §15-56-405.
- Proportionate part of royalties vested in life tenant, §15-56-405.

Sales.

- Sale of lands or mineral rights.
- Leases unaffected by sale, §15-56-307.
- Short line railroads, §15-56-502.

Service of process.

- Lease of mineral rights.
- Life tenants.
- Service upon respondents, §15-56-409.

Short line railroads.

- Authorized, §15-56-501.
- Common carriers.
- Rights, powers and privileges of common carrier, §15-56-503.
- Connections.
- Right to connections, §15-56-504.
- Crossings.
- Right to crossings, §15-56-504.
- Eminent domain, §15-56-502.
- Equipment.
- Passenger equipment, §15-56-505.
- Leases.
- Power to lease, §15-56-502.
- Operation by persons owning mineral interests, §15-56-501.
- Passenger equipment, §15-56-505.
- Powers.
- Construct, lease, operate or sell lines, §15-56-502.
- Rights, powers and privileges of common carrier, §15-56-503.
- Purpose, §15-56-501.
- Rights of way, §15-56-502.

MINES AND MINERALS —Cont'd**Short line railroads —Cont'd**

Rights, powers and privileges of common carrier, §15-56-503.

Rights to connections, crossings and transfer, §15-56-504.

Sales.

Power to sell, §15-56-502.

Transfers.

Rights to transfers, §15-56-504.

Strip mining.

Surface coal mining and reclamation, §§15-58-101 to 15-58-510.

Summons and process.

Lease of mineral rights, §15-56-302.

Issuance and service, §15-56-302.

Surface coal mining and reclamation.

General provisions, §§15-58-101 to 15-58-510.

United States.

Claims on public lands, §§15-56-201 to 15-56-205.

MINORITIES.**Minority business economic**

development, §§15-4-301 to 15-4-314.

MINORITY BUSINESS ECONOMIC DEVELOPMENT.

Generally, §§15-4-301 to 15-4-314.

Taxation.

Affordable neighborhood housing tax credits, §§15-5-1301 to 15-5-1305.

MONOPOLIES AND RESTRAINT OF TRADE.**Brine production.**

Formation of units.

No violation of statutes, §15-76-320.

Oil and gas.

Agreements to use secondary recovery methods.

Not in restraint of trade, §15-72-504.

Integration of production and drilling units.

No restraint of trade, §15-72-307.

Price discrimination in purchasing crude oil, §15-74-501.

Price discrimination.

Oil and gas.

Purchasing crude oil, §15-74-501.

MORTGAGES AND DEEDS OF TRUST.**Natural resources commission.**

Property of commission not to be mortgaged, §15-22-511.

MORTGAGES AND DEEDS OF TRUST —Cont'd**Trees and timber.**

Measuring and marking logs.

Mortgages of marked logs to be recorded, §15-32-407.

MOTOR CARRIERS.**Mines and minerals.**

Short line railroads.

Rights, etc., of carriers, §15-56-503.

MOTOR VEHICLE REGISTRATION.**Oil and gas commission.**

Exemption from provisions, §15-71-113.

MOTOR VEHICLES.**Oil and gas commission.**

Authority to acquire and maintain automobiles, §15-71-113.

Exemption from registration regulations, §15-71-113.

MULBERRY RIVER.**Dams.**

Unlawful to construct permanent dam, §15-23-102.

Natural and scenic rivers system.

Subchapter not applicable to, §15-23-102.

Scenic river.

Designation, §15-23-102.

N**NAMES.**

Natural resources commission, §15-20-201.

NATURAL AND CULTURAL RESOURCES COUNCIL.

Compensation of members, §15-12-101.

Composition, §15-12-101.

Creation, §15-12-101.

Duties, §15-12-102.

Grants, §15-12-103.

Meetings, §15-12-101.

Officers, §15-12-101.

Real property transfer tax.

Disposition of revenues from additional tax, §15-12-103.

Trust fund, §15-12-103.

Administration, §15-12-102.

NATURAL AREA PROTECTION.

Definitions, §15-20-501.

Rules and regulations.

Promulgation, §15-20-502.

Violations, §15-20-502.

NATURAL AREA PROTECTION

—Cont'd

Violations of subchapter, §15-20-502.

Exceptions, §15-20-503.

Wetlands mitigation bank,

§§15-22-1001 to 15-22-1012.

NATURAL AREA SYSTEM.**Category of property in natural areas system, §15-20-310.****Local significance.**

Designation of areas of local significance, §15-20-313.

NATURAL HERITAGE COMMISSION.**Designation of rivers, §15-23-311.**

Specific designations, §15-23-313.

Duties, §15-23-308.**Funding, §15-23-315.****Power to obtain property, §15-23-309.****Proposed contracts and compacts with federal government, §15-23-310.****NATURAL RESOURCES.****Arkansas natural and cultural resources council, §§15-12-101 to 15-12-103.****Commission, §§15-22-201 to 15-22-223.****Lignite development, §§15-55-401 to 15-55-405.****Scenic resources.**

General provisions, §§15-20-701 to 15-20-708.

Wetlands mitigation bank, §§15-22-1001 to 15-22-1012.**NATURAL RESOURCES COMMISSION.****Allocation of water during shortages, §15-22-217.**

Delegation of authority, §15-22-221.

Appeals.

Dam construction, §15-22-209.

Rules, regulations or orders, §15-22-209.

Appointment of members, §15-20-202.**Appropriations.**

Use of appropriated funds, §15-22-513.

Authority of commission to pledge or sell loans, §15-20-802.**Bond issues.**

Arkansas water, waste disposal, and pollution abatement facilities financing act of 2007, §§15-20-1301 to 15-20-1323.

NATURAL RESOURCES**COMMISSION —Cont'd****Bond issues —Cont'd**

Construction assistance revolving loan fund.

Use of fund as security for bonds issued by commission, §15-5-906.

Water development projects. Appropriated funds.

Use, §15-22-513.

Tax exemption, §15-22-512.

Water resources bonds.

Generally, §§15-22-1301 to 15-22-1313.

Bonds, surety.

Executive director, §15-20-205.

Commission.

Defined, §15-22-202.

Complaints.

Verified complaint requirements, §15-20-101.

Composition, §15-20-202.**Congressional districts.**

Representation on commission, §15-20-202.

Construction and interpretation.

Dam construction.

Cumulative effect of provisions, §15-22-203.

Water development projects.

Supplemental nature of provisions, §15-22-502.

Construction assistance revolving loan fund, §§15-5-901 to 15-5-910.**Continued water use study, §15-22-220.****Contracts.**

Power to contract, §15-20-207.

United States.

Water development projects.

Cooperation or contracts with federal government unimpaired by act, §15-22-502.

Cooperation with state or federal agencies.

Water development projects, §15-22-506.

Cost recovery.

Fee assessments, §15-20-209.

Creation, §15-20-201.**Dam construction.**

Appeals, §15-22-209.

Cumulative effect, §15-22-203.

NATURAL RESOURCES**COMMISSION —Cont'd****Dam construction —Cont'd**

Exemptions from chapter, §15-22-214.

Minimum stream flows, §15-22-222.

Penalties, §15-22-204.

Permits.

Applications, §15-22-211.

Notice of filing, §15-22-212.

Cancellation, §15-22-213.

Conditions for issuance, §15-22-210.

Exemptions, §15-22-214.

Fees, §15-22-219.

Form, §15-22-211.

Hearings, §15-22-212.

Issuance, §15-22-212.

Conditions, §15-22-210.

Modification, §15-22-213.

Notice of filing, §15-22-212.

Required, §15-22-210.

Right to take impounded water,
§15-22-216.**Declaration of policy, §15-22-201.****Definitions, §15-22-202.**Pooled loan securitization act,
§15-20-801.Water development projects,
§15-22-501.**Diffused surface waters.**

Defined, §15-22-202.

Director.

Powers.

Wetlands mitigation bank act,
§15-22-1004.**Diversion of water.**

Registration.

Certificates of registration,
§15-22-215.

Exceptions, §15-22-215.

Domestic uses.

Defined, §15-22-202.

Duties, §§15-20-207, 15-22-301.Water development projects,
§15-22-505.**Executive director.**

Appointment, §15-20-205.

Bond, surety, §15-20-205.

Duties, §15-20-205.

Custodian of property and
disbursing agent, §15-20-205.

Powers, §15-20-205.

Expenses of members.

Mileage expenses, §15-20-202.

Fees.Assessment for cost recovery,
§15-20-209.

Dam construction.

Permits, §15-22-219.

NATURAL RESOURCES**COMMISSION —Cont'd****Fees —Cont'd**

Water development fund.

Earnings and fees to fund,
§15-22-514.**Financial advisor, §15-20-803.****Financing.**Authority of commission to pledge or
sell loans.Pooled loan securitization act,
§15-20-802.**Funds.**Authority of commission to pledge or
sell loans.

Deposit of proceeds, §15-20-802.

Water development fund, §15-22-507.
Fees and earnings to fund,
§15-22-514.**Hearings.**

Dam construction.

Permits, §15-22-212.

Impounded waters.

Right to take, §15-22-216.

Limitation.Pooled loan securitization act,
§15-20-804.**Loans.**Authority of commission to pledge or
sell, §15-20-802.**Meetings, §15-20-206.****Minimum stream flows.**

Establishment, §15-22-222.

Mortgages and deeds of trust.Property of commission not to be
mortgaged, §15-22-511.**Name, §15-20-201.****Notice.**

Dam construction.

Permits, §15-22-212.

Rules, regulations or orders,
§15-22-206.**Number of members, §15-20-202.****Oaths.**

Oath of office of members, §15-20-202.

Witnesses.

Administration of oath to witnesses,
§15-22-207.**Officers, §15-20-204.****Offices.**

Location, §15-20-203.

Orders.

Appeals, §15-22-209.

Procedure for making, §15-22-206.

Ordinary high water marks.

Defined, §15-22-202.

Organization, §15-20-204.

NATURAL RESOURCES**COMMISSION —Cont'd****Penalties.**

Violations of provisions, §15-22-204.

Per diem of members, §15-20-202.**Persons.**

Defined, §15-22-201.

Planning.

Arkansas water plan, §15-22-503.

Publication, §15-22-504.

Policy.

Declaration, §15-22-201.

Pooled loan securitization act,

§§15-20-801 to 15-20-804.

Authority of commission to pledge or sell loans, §15-20-802.

Definitions, §15-20-801.

Financial advisor, §15-20-803.

Limitation, §15-20-804.

Poultry feeding operations.

Litter management.

Registration with natural resources commission, §§15-20-901 to 15-20-906.

Powers of commission, §15-20-207.

Streams, §15-22-205.

Water development projects, §15-22-505.

Property of commission.

No forced sales or mortgages, §15-22-511.

Tax exemption, §15-22-512.

Protection of service areas,

§15-22-223.

Publications.

State water plan, §15-22-504.

Qualifications of members,

§15-20-202.

Quorum, §15-20-206.**Registration.**

Diversion of water.

Certificates of registration, §15-22-215.

Reports.

Joint interim committee on agriculture and economic development.

Periodic reports to, §15-22-301.

Water development projects.

Filing of report by other agencies, §15-22-502.

Withdrawal of underground water, §15-22-302.

Research.

Continued water use study, §15-22-220.

NATURAL RESOURCES**COMMISSION —Cont'd****Reservoirs.**

Storage of water in government reservoirs.

Right to acquire title and use water stored, §15-22-218.

Rules and regulations.

Adoption, §15-20-206.

Appeals, §15-22-209.

Arkansas water plan, §15-22-503.

Procedures for adoption, §15-22-206.

Wetlands mitigation banks, §15-22-1008.

Seal, §15-20-203.**Shortages of water.**

Allocation during shortages, §15-22-217.

Delegation of authority, §15-22-221.

Soil nutrient application and poultry litter utilization.

General provisions, §§15-20-1101 to 15-20-1114.

Soil nutrient management planners and applicators.

Certification, §§15-20-1001 to 15-20-1008.

Sparta aquifer, §15-20-210.**Sparta aquifer critical groundwater counties.**

Investigations, §15-22-1218.

Petition to establish conservation board.

Duties of commission upon receipt of, §15-22-1206.

Rules and regulations, §15-22-1218.

State water plan, §15-22-503.

Publication, §15-22-504.

Streams.

Defined, §15-22-202.

Powers of commission, §15-22-205.

Surplus nutrient removal incentives, §§15-20-1201 to 15-20-1206.**Taxation.**

Property of commission and interest on bonds.

Exemption from taxation, §15-22-512.

Terms of members, §15-20-202.**Transfer and transportation of water.**

Excess surface water.

Authorization of transportation to nonriparians, §15-22-304.

General assembly.

Approval by general assembly, §15-22-303.

NATURAL RESOURCES**COMMISSION —Cont'd****Transfer and transportation of water —Cont'd**

Notice to commission, §15-22-303.

Recommendation by commission, §15-22-303.

Researching request, §15-22-303.

Underground aquifers, §15-20-210.**United States.**

Water development projects.

Cooperation with state or federal agencies, §15-22-506.

Contracts in cooperation with federal government unimpaired, §15-22-502.

Vacancies.

Filling, §15-20-202.

Water development projects.

Arkansas water plan.

Development by commission, §15-22-503.

Bond issues.

Appropriated funds.

Use, §15-22-513.

Tax exemption, §15-22-512.

Cooperation with state or federal agencies, §15-22-506.

Contracts in cooperation with federal government unimpaired by subchapter, §15-22-502.

Costs, §15-22-506.

Definitions, §15-22-501.

Duties of commission, §15-22-505.

Funds.

Water development fund, §15-22-507.

Fees and earnings to fund, §15-22-514.

Powers of commission, §15-22-505.

Reports.

Filing by other state agencies, §15-22-502.

Supplemental nature of provisions, §15-22-502.

Water resources bonds.

Generally, §§15-22-1301 to 15-22-1313.

Water resources development.

Cost share financing.

Duties, §15-22-804.

Exception to federal cooperation requirement, §15-22-810.

Water resources engineer.

Employment, §15-20-207.

Water use study.

Continued study, §15-22-220.

Wetlands mitigation bank,

§§15-22-1001 to 15-22-1012.

NATURAL RESOURCES**COMMISSION —Cont'd****Witnesses.**

Oaths.

Administration of oath to witnesses, §15-22-207.

Refusal to testify, §15-22-208.

Subpoenas, §15-22-208.

NEGOTIABLE INSTRUMENTS.**Capital development companies.**

Bonds, notes and debentures.

Obligations as negotiable instruments, §15-4-1023.

Development finance corporations.

Bond issues and debentures of corporations.

Obligations as negotiable instruments, §15-4-921.

Industrial development.

County and regional industrial development companies.

Obligations as negotiable instruments, §15-4-1221.

Water pollution abatement facilities bonds.

Characteristics of bonds, §15-20-1304.

Water resources development.

Bond issues, §15-22-610.

NEIGHBORHOOD HOUSING TAX**CREDITS, §15-5-1301 to 15-5-1305.****NEPOTISM.****Forestry commission.**

Employment of relatives, §15-31-107.

NEW JOB CREATION.**Consolidated incentive act of 2003,**

§§15-4-2701 to 15-4-2714.

NONGAME PRESERVATION.**Administration.**

Costs transferred to constitutional and fiscal agencies fund, §15-45-306.

Committee.

Appointment, §15-45-302.

Composition, §15-45-302.

Expenditures, §15-45-303.

Costs of administration.

Transferred to constitutional and fiscal agencies fund, §15-45-306.

Expenditures.

Generally, §15-45-303.

Funds.

Balance of funds carried forward, §15-45-305.

Expenditures, §15-45-303.

Legislative intent, §15-45-301.**Purchase of land, §15-45-304.**

NONGAME PRESERVATION —Cont'd

Use of revenues, §15-45-303.

NONPROFIT INCENTIVE ACT OF 2005, §§15-4-3101 to 15-4-3107.**NONRESIDENTS.****Fishing.**

Licenses.

Fees, §15-42-107.

Nonresidents over 65.

Reciprocity agreements,
§15-42-126.

Required, §15-42-107.

Three-day fishing license,
§15-42-108.

Hunting.

Licenses.

Nonresidents over 65.

Reciprocity agreements,
§15-42-126.

NOTICE.**Abandonment.**

Oil and gas.

Notice of abandoned wells,
§15-72-216.

Artesian wells.

Inadequacy of well for home uses.

Petition to county judge as to nearby
abandoned well, §15-22-402.

Environmental quality.

Dedication of property.

Hearing on changes in property
interest created by dedication,
§15-20-314.

Geological survey.

Mineral discoveries, §15-55-303.

Location and extent of state
minerals.

Agencies to be notified,
§15-55-209.

Hunting accidents.

Right to have additional chemical test
administered, §15-42-127.

Mines and minerals.

Claims on public lands.

Recording of mining claim notices,
§§15-56-201 to 15-56-205.

Natural resources commission.

Dam construction.

Permits, §15-22-212.

Rules, regulations or orders,
§15-22-206.

Oil and gas.

Abandonment.

Notice of abandoned wells,
§15-72-216.

Exploration or drilling.

Notice to surface owners of
premises, §15-72-203.

NOTICE —Cont'd**Oil and gas —Cont'd**

Gasoline, fuel, illuminating and
heating oil.

Testing of untested oil or gasoline
before sale, §15-74-409.

Injunctions against commission,
§15-72-107.

Leaks in natural gas apparatus,
§15-72-210.

Lease of rights.

Forfeitures.

Notice to lessee to release,
§15-73-204.

Notice of transfer of mineral lease,
§15-73-208.

Wells.

Intent to drill well, §15-72-205.

Wild or out of control wells,
§15-72-212.

Sparta aquifer critical groundwater counties.

Conservation boards.

Hearing on establishment,
§15-22-1207.

Surface coal mining and reclamation.

Imminent danger or harm.

Conditions, practices and violations
not creating, §15-58-301.

Trees and timber.

State lands.

Unlawful cutting or removal.

Seizure of logs unlawfully cut,
§15-32-303.

Water resources development.

Bond issues, §15-22-613.

NUCLEAR ENERGY.**Atomic and industrial development.**

Conduct of studies concerning changes
in laws and regulations with a
view to atomic industrial
development, §15-10-304.

Coordination of studies and
development activities,
§15-10-305.

Declaration of policy, §15-10-301.

Definitions, §15-10-302.

Injunctions, §15-10-306.

Licenses.

United States licenses or permits
required, §15-10-303.

Injunctions, §15-10-306.

Permits.

United States licenses or permits
required, §15-10-303.

Injunctions, §15-10-306.

**NUCLEAR ENERGY —Cont'd
Policy.**

Declaration of policy, §15-10-301.

State departments and agencies.

Conduct of studies concerning changes in laws and regulations with a view to atomic industrial development, §15-10-304.

Coordination of studies and development activities, §15-10-305.

United States.

Licenses or permits from United States required, §15-10-303.

Injunctions, §15-10-306.

NUISANCES.**Birds.**

Double-crested cormorants.

Elimination, §15-46-106.

Surface coal mining and reclamation.

Adverse effects abated, §15-58-404.

NUTRIENT SURPLUS AREAS.**Soil nutrient application and poultry litter utilization.**

General provisions, §§15-20-1101 to 15-20-1114.

Surplus nutrient removal incentives, §15-20-1201 to 15-20-1206.**O****OATHS OR AFFIRMATIONS.****Forests and forestry.**

Commission.

Oath of office of members, §15-31-102.

Geological survey.

Oath of office, §15-55-202.

Natural resources commission.

Oath of office of members, §15-20-202.

Witnesses.

Administration of oath to witnesses, §15-22-207.

Oil and gas.

Commission, §15-71-102.

Administration of oaths, §15-71-104.

Sparta aquifer critical groundwater counties.

Conservation board members, §15-22-1210.

State parks, recreation and travel commission.

Oath of office, §15-11-202.

Trees and timber.

County timber inspectors, §15-32-202.

Oath filed in recorder's office, §15-32-204.

OIL AND GAS.**Abandonment.**

Plugging dry or abandoned wells, §§15-72-217, 15-72-218.

Wells.

Abandoned and orphaned well plugging fund, §15-71-115.

Administration of program and fund, §15-71-110.

Notice of abandonment, §15-72-216.

Plugging of dry or abandoned wells, §15-72-216.

Accidents.

Compensation of surface owners and tenants and restoration of land, §15-72-219.

Transportation of compressed gases.

Liability generally, §15-75-109.

Accounts and accounting.

Lease of oil, gas and mineral interests.

Life estates.

Trustee for remaindermen, §15-73-306.

Actions.

Proceeds.

Nonpayment of proceeds, §15-74-603.

Weights and measures.

Standard gas measurement law.

Sale or delivery of gas by volume.

Civil action for damages, §15-74-305.

Addresses.

Application for drilling oil or gas wells to contain address of applicant, §15-72-109.

Affidavits.

Gasoline, fuel, illuminating and heating oil.

Testing of untested oil or gasoline before sale.

Affidavit of making test, §15-74-409.

Agents.

Commissioned agents of major oil companies.

Businesses and products involving federal energy agency fuel allocation.

Contracts requiring agents to make certain purchases or payments void, §15-74-502.

Misdemeanors, §15-74-502.

Regular price exception, §15-74-502.

Separate offenses, §15-74-502.

Aiding and abetting.

Violation of provisions, §15-72-103.

OIL AND GAS —Cont'd**Appeals**, §15-72-110.

Court review by aggrieved person,
§15-72-106.

Proceedings under act, §15-72-110.

Applications.

Drilling oil or gas wells.

Application to contain address of
applicant, §15-72-109.

Permits to drill discovery wells,
§15-72-703.

Approval of application, §15-72-704.

Attorneys at law.

Fees.

Proceeds.

Actions for nonpayment.

Award of attorney's fees,
§15-74-603.

Auditor of state.

Payment of vouchers of commission,
§15-71-109.

Bonds, surety.

Director of production and
conservation, §15-71-105.

Lease of oil, gas and mineral interests.

Trustee for remaindermen,
§§15-73-304, 15-73-306.

**Bonus for discovery of commercial
oil pool**, §15-72-702.**Brine production**, §§15-76-301 to
15-76-324.**Certificates of discovery.**

Commercial pools, §15-72-705.

Churches.

Lease of oil, gas and mineral interests,
§15-73-202.

Civil procedure.

Commission, §15-71-112.

Commission.

Appointment, §§15-71-101, 15-71-102.

Assessments, §15-71-107.

Purchaser to deduct and remit
assessment to commission,
§15-71-108.

Remission by producer, §15-71-108.

Auditor of state.

Payment of commission's vouchers,
§15-71-109.

Chairman, §15-71-103.

Civil procedure, §15-71-111.

Compensation, §15-71-102.

Composition, §15-71-102.

Counsel for commission, §15-71-104.

Creation, §15-71-101.

Definitions, §15-72-102.

Director of production and
conservation.

Appointment by commission,
§15-71-105.

OIL AND GAS —Cont'd**Commission —Cont'd**

Documents.

Summons and process.

Production of documents,
§15-71-112.

Failure to produce documents,
§15-71-112.

Employees.

Appointment of necessary
employees, §15-71-105.

Evidence.

Witnesses.

Procedure in case of refusal to
testify, §15-71-112.

Expenses of members, §15-71-102.

Fees, §15-71-110.

Salt water wells into which
debrominated brine is injected,
§15-71-110.

Hearings, §15-71-103.

Hearing officers, §15-71-106.

Investigations, §15-71-110.

Liens.

Control of wild or out of control
wells.

Recovery of expenses, §15-72-212.

Motor vehicles.

Authority to acquire and maintain,
§15-71-113.

Exemption from registration
regulations, §15-71-113.

Oaths.

Administration of oaths, §15-71-104.

Oath of office, §15-71-102.

Offices, §15-71-103.

Payment of vouchers of commission,
§15-71-109.

Pools, §15-72-302.

Drilling units, §15-72-302.

Rules and regulations, §15-72-302.

Powers, §15-71-110.

Promotion of exploration for oil.

Powers, §15-72-608.

Qualifications of members, §15-71-102.

Quorum, §15-71-103.

Rules and regulations, §15-71-110.

Adoption.

Votes necessary, §15-71-103.

Pools, §15-72-302.

Self-incrimination.

Witnesses, §15-71-112.

Summons and process.

Documents, §15-71-112.

Failure to produce documents,
§15-71-112.

Witnesses, §15-71-112.

Terms of office, §15-71-102.

OIL AND GAS —Cont'd**Commission —Cont'd**

Underground storage of gas.

Authority of commission,
§15-72-603.

Certificate of commission,
§15-72-605.

Weights and measures.

Crude petroleum oil.

Commission in supervisory
control, §15-74-201.

Wild or out of control wells.

Action by commission to control,
§15-72-212.

Recovery of expenses, §15-72-212.

Lien on well, §15-72-212.

Witnesses.

Production of documents,
§15-71-112.

Refusal to testify or produce
documents, §15-71-112.

Self-incrimination, §15-71-112.

Summons and process, §15-71-112.

Compacts.

Interstate compact to conserve oil and
gas, §§15-72-901 to 15-72-904.

**Compensation of surface owners
and tenants for spills of crude
oil or produced water,
§15-72-219.****Compressed gases.**

Transportation, §15-75-109.

Condemnation.

Gasoline, fuel, illuminating and
heating oil, §§15-74-405,
15-74-406.

**Confidential treatment of reports,
§15-72-805.****Conflicts of interest.**

Gasoline, fuel, illuminating and
heating oil.

Manufacture or sale.

Inspectors not to be interested,
§15-74-403.

Construction and interpretation.

Price discrimination in purchasing
crude oil.

Cumulative effect of act, §15-74-501.

Containers.

Affidavits.

Containers bearing owner's
identification.

Unlawful use of containers,
§15-75-406.

Consent.

Containers bearing owner's
identification.

Use of container without consent
of owner, §15-75-406.

OIL AND GAS —Cont'd**Containers —Cont'd**

Evidence.

Containers bearing owner's
identification.

Unlawful use, §15-75-406.

Misdemeanors.

Containers bearing owner's
identification.

Violation of provisions,
§15-75-406.

Sales.

Containers bearing owner's
identification, §15-75-406.

Searches and seizures.

Containers bearing owner's
identification.

Search warrants, §15-75-406.

Vandalism.

Containers bearing owner's
identification, §15-75-406.

Contracts.

Weights and measures.

Standard gas measurement law.

Sale or delivery of gas by volume,
§15-74-305.

**Corporations for disposal of salt
water.**

Authorized, §15-76-202.

Damages.

Lease of oil, gas and mineral interests.

Forfeiture of leases.

Failure to release, §15-73-204.

Spills of crude oil or produced water,
§15-72-219.

**Declaration of interest in gas by
division.**

Information required, §15-74-101.

Definitions, §15-72-102.

Emergency set-aside programs,
§15-72-802.

Price discrimination in purchasing
crude oil.

"Person" and "pool," §15-74-501.

Promotion of exploration for oil,
§15-72-701.

Secondary recovery, §15-72-501.

Underground storage of gas,
§15-72-602.

Weights and measures.

Standards gas measurement law.

Cubic foot of gas, §15-74-302.

Wells, §15-72-201.

**Director of production and
conservation.**

Appointment by commission,
§15-71-105.

Bonds, surety, §15-71-105.

OIL AND GAS —Cont'd**Director of production and conservation —Cont'd**

Powers and duties, §15-71-105.

Disposal of salt water.

Corporations for disposal of salt water, §15-76-202.

Improper disposal, §15-76-201.

Penalties, §15-75-201.

Injunctions.

Unlawful disposal of salt water, §15-76-201.

Penalties.

Unlawful disposal, §15-76-202.

Documents.

Commission.

Summons and process.

Production of documents, §15-71-112.

Failure to produce documents, §15-71-112.

Dower and curtesy.

Partition of oil and gas lease interests.

Effect of sale or lease, §15-73-408.

Drilling units.

Applicability of certain provisions, §15-72-301.

Integrated production.

Allocation of production, §15-72-305.

Authorization, §15-72-303.

Costs sharing, §15-72-305.

Expenses.

Obligation or liability of owners, §15-72-311.

Findings to support order requiring unit operation, §15-72-309.

Hearings, §15-72-304.

Notice, §15-72-323.

Liens.

Operator's lien, §15-72-312.

Salt water disposal units, §15-72-320.

Limitation on production.

Where no integration, §15-72-306.

Not in restraint of trade, §15-72-307.

Orders.

Contents, §15-72-310.

Findings to support order requiring unit operation, §15-72-309.

New unit operation order in pool established by previous order, §15-72-313.

Salt water disposal unit operation. Contents, §15-72-318.

Enlarged operation of units established by previous order, §15-72-321.

OIL AND GAS —Cont'd**Drilling units —Cont'd**

Integrated production —Cont'd

Orders —Cont'd

Salt water disposal unit operation —Cont'd

Findings to support order requiring, §15-72-317.

Petition for unit operation, §15-72-308.

Salt water disposal units.

Expenses, §15-72-319.

Liens, §15-72-320.

Oil and gas from salt water disposal units.

Product of tract, §15-72-322.

Orders.

Contents, §15-72-318.

Enlarged operation of units established by previous order, §15-72-321.

Findings to support order requiring, §15-72-317.

Petition to establish, §15-72-316.

Unit area oil and gas.

Product of tract, §15-72-314.

Unitization of entire pool as one operating unit, §15-72-315.

Eleemosynary institutions.

Lease of oil, gas and mining interests, §15-73-202.

Emergency set-aside programs.

Definitions, §15-72-802.

Establishment, §15-72-804.

Generally, §15-72-804.

Penalties.

Violation of act, §15-72-803.

Policy, §15-72-801.

Purposes, §15-72-801.

Violation of chapter.

Penalties, §15-72-803.

Enhanced recovery.

Tax incentives, §15-72-1001.

Exemptions.

Increased production by use of new technology, §15-72-1003.

Reestablishment of inactive wells and fields, §15-72-1002.

Evidence.

Commission.

Witnesses.

Procedure in case of refusal to testify, §15-71-112.

Partition of oil and gas lease interests.

Evidence authorizing lease, §15-73-407.

OIL AND GAS —Cont'd**Explosions.**

Transportation of compressed gases.

Accidents.

Liability generally, §15-75-109.

Fees.

Commission, §15-71-110.

Salt water wells into which
debrominated brine is injected,
§15-71-110.

Wells producing liquid hydrocarbons,
§15-71-116.

Forfeitures.

Leases, §§15-73-203 to 15-73-205.

Royalties.

Lessee receiving more than share
from sale.

Forfeiture of lease, §15-74-708.

Fraud.

Proceeds.

Fraudulently withholding payment,
§15-74-602.

Funds.

Conservation fund, §15-71-109.

Gasoline, fuel, illuminating and
heating oil.

Constitutional and fiscal agencies
fund.

Inspection and testing fees
credited towards, §15-74-410.

**Gasoline, fuel, illuminating and
heating oil.**

Affidavits.

Testing of untested oil or gasoline
before sale, §15-74-409.

Appropriation of fluids by inspectors
for personal use forbidden,
§15-74-403.

Commissioner of revenues to keep
records of inspections, §15-74-410.

Conflicts of interest.

Interest in manufacture or sale of oil
or gasoline.

Inspectors not to be interested,
§15-74-403.

Distillation range, §15-74-404.

Fire tests for illuminating or heating
oils, §15-74-407.

Gas or vapor exception, §15-74-407.

Funds.

Constitutional and fiscal agencies
fund.

Inspection and testing fees
credited towards, §15-74-410.

Hose inspection, §15-74-405.

Inspections.

Commissioner of revenues to keep
records, §15-74-410.

OIL AND GAS —Cont'd**Gasoline, fuel, illuminating and
heating oil —Cont'd**

Inspections —Cont'd

Hose inspection, §15-74-405.

Money collected credited to
constitutional and fiscal
agencies fund, §15-74-410.

Records, §15-74-408.

Commissioner of revenues to keep
records, §15-74-410.

Misdemeanors.

Violation of provisions, §15-74-401.

Notice.

Testing of untested oil or gasoline
before sale, §15-74-409.

Records, §15-74-408.

Commissioners of revenues to keep
records of inspections,
§15-74-410.

Inspection of records, §15-74-408.

Kept by dealers, §15-74-408.

Rules and regulations.

Promulgation, §15-74-402.

Specifications, §15-74-404.

Tests, §15-74-404.

Distillation range, §15-74-404.

Untested oil or gasoline tested before
sale, §15-74-409.

Affidavit of making test, §15-74-409.

Notice given commissioner of
revenues, §15-74-409.

Water and suspended matter.

Specifications, §15-74-404.

Good Samaritans.

Transportation of compressed gases.

Accidents.

Nonliability of persons rendering
aid, §15-75-109.

Liability not precluded for gross
negligence or intentional
misconduct, §15-75-109.

Guardians.

Partition of oil and gas lease interests,
§15-73-405.

Hearings.

Commission, §15-71-103.

Hearing officers, §15-71-106.

Integration of production in drilling
units.

Notice, §15-72-323.

Illegal oil and gas.

Conservator.

Custody of illegal oil and gas,
§15-72-405.

Contraband.

Finding oil and gas to be
contraband, §15-72-402.

OIL AND GAS —Cont'd**Illegal oil and gas —Cont'd**

Dealing prohibited, §15-72-401.

When penalty imposed, §15-72-401.

Other causes of action, §15-72-407.

Sale.

Bringing action for seizure and sale,
§15-72-402.

Sale, purchase or acquisition
prohibited, §15-72-401.

Seizure and sale.

Application of proceeds,
§15-72-406.

Searches and seizures.

Bringing action for seizure and sale,
§15-72-402.

Order of seizure, §15-72-404.

Seizure and sale of oil and gas.

Application of proceeds,
§15-72-406.

Summons.

Issuance, §15-72-403.

Transportation, refining, processing or
handling prohibited, §15-72-401.

Inactive wells and fields.

Reestablishment.

Tax incentive, §15-72-1002.

Indorsements.

Lease of oil, gas and mineral interests.

Forfeiture of leases.

Failure to pay rental installment.

Indorsement of forfeiture by
landowner, §15-73-205.

Injunctions.

Against commission, §15-72-106.

Notice, §15-72-107.

Enforcement of provisions, §15-72-108.

Unlawful disposal of salt water,
§15-76-201.

Interest.

Proceeds.

Delinquent payment, §15-74-601.

Interpleader and intervention.

Partition of oil and gas lease interests,
§15-73-404.

Interstate compact to conserve oil and gas.

Contents, §15-72-902.

Extension of compact.

By governor, §15-72-903.

Two-year extension, §15-72-901.

Generally, §15-72-902.

Governor.

Authorized to execute agreement,
§15-72-901.

Extension or termination of
compact, §15-72-903.

OIL AND GAS —Cont'd**Interstate compact to conserve oil and gas —Cont'd**

Governor —Cont'd

Official representative of state on
commission, §15-72-904.

Interstate oil compact commission,
§§15-72-902, 15-72-904.

Assistant representative,
§15-72-902.

Governor.

Official representative of state,
§15-72-902.

Purpose, §15-72-902.

Termination of compact by governor,
§15-72-903.

Two-year extension of compact,
§15-72-901.

Investigations.

Commission.

Powers of commission, §15-71-110.

Secondary recovery methods,
§15-72-502.

Submission of findings to
landowners, §15-72-503.

Lease of oil, gas and mineral interests.

Accounts and accounting.

Life estates.

Trustee for remaindermen,
§15-73-306.

Cancellation of leases.

Life estates, §15-73-308.

Churches, §15-73-202.

Damages.

Forfeiture of leases.

Failure to release, §15-73-204.

Eleemosynary institutions, §15-73-202.

Expiration of leases.

Life estates, §15-73-308.

Extension of term by production in
quantity in one section,
§15-73-201.

Applicability of act, §15-73-201.

Exception to act, §15-73-201.

Forfeiture of leases.

Damages for failure to release,
§15-73-204.

Duty of lessee to cancel or release,
§15-73-203.

Failure to pay rental installment,
§15-73-205.

Indorsement of forfeiture by
landowner, §15-73-205.

Generally, §15-73-203.

Indorsement of forfeiture by
landowner, §15-73-205.

Failure to pay rental installment,
§15-73-205.

OIL AND GAS —Cont'd**Lease of oil, gas and mineral interests —Cont'd**

Forfeiture of leases —Cont'd

Method of showing release on record, §15-73-203.

Notice to lessee to release forfeited lease, §15-73-204.

Royalties.

Lessee receiving more than share from sale.

Forfeiture of lease, §15-74-708.

Indorsements.

Forfeiture of leases.

Failure to pay rental installment.

Indorsement of forfeiture by landowner, §15-73-205.

Life estates.

Approval of lease.

Court approval, §15-73-305.

Cancellation of lease, §15-73-308.

Confirmation of lease by court, §15-73-307.

Effect, §15-73-307.

Order of confirmation divests title of contingent remaindermen, §15-73-307.

Conveyances by reversioner or remaindermen to life tenant or lessee.

Binding in certain cases, §15-73-309.

Court approval of lease, §15-73-305.

Determination by court, §15-73-303.

Execution of lease.

Order authorizing, §15-73-304.

Expiration of lease, §15-73-308.

Forfeiture of lease, §15-73-308.

New lease authorized, §15-73-308.

Orders.

Authorizing execution of lease, §15-73-304.

Confirmation order.

Divests title of contingent remaindermen, §15-73-307.

Persons vested with life estate, §15-73-301.

Petitions to lease, §15-73-302.

By life tenant, §15-73-302.

Content, §15-73-302.

Determination by court, §15-73-303.

Proportionate part of minerals.

Vested in life tenant in fee, §15-73-304.

OIL AND GAS —Cont'd**Lease of oil, gas and mineral interests —Cont'd**

Life estates —Cont'd

Remainders, reversions and executory interests.

Conveyances by reversioner or remaindermen to life tenant or lessee.

Binding in certain cases, §15-73-309.

Lease confirmation order.

Divests title of contingent remaindermen, §15-73-307.

Royalties, §15-73-304.

Trustee for interests of remaindermen, §15-73-304.

Trustee for remaindermen, §§15-73-304, 15-73-306.

Accounts and accounting, §15-73-306.

Appointment, §15-73-304.

Bonds, surety, §15-73-304.

Additional bond, §15-73-306.

Compensation, §15-73-306.

Investment of funds, §15-73-306.

Removal or resignation, §15-73-306.

Royalties, §15-73-304.

Successor, §15-73-306.

Trusts and trustees.

Interests of remaindermen, §15-73-304.

Lodges and societies, §15-73-202.

Mineral lessees, prudent operator standard, §15-73-207.

New leases.

Life estates, §15-73-308.

Notice of transfer of mineral lease, §15-73-208.

Partition of oil and gas lease interests.

General provisions, §§15-73-401 to 15-73-409.

Petitions.

Life estates.

Lease by life tenant, §15-73-302.

Determination by court, §15-73-303.

Prudent operator standard for mineral lessees, §15-73-207.

Rent.

Forfeiture of leases.

Failure to pay rental installment, §15-73-205.

OIL AND GAS —Cont'd**Lease of oil, gas and mineral interests —Cont'd****Term.**

Extension of term by production in quantity in one section, §15-73-201.

Applicability of act, §15-73-201.

Exceptions to act, §15-73-201.

Transfer of mineral lease, §15-73-208.

Weights and measures.

Leasehold interest separable.

Violation by one party, §15-74-202.

Oil removed from lease to be measured.

Cancellation of leasehold interest for violation, §15-74-202.

Lease voidable upon violation of measurement provision, §15-74-202.

Liens.

Integration of production and drilling units.

Operator's lien, §15-72-312.

Salt water disposal units, §15-72-320.

Wells.

Plugging dry or abandoned wells.

Right of another to plug well, §15-72-218.

Surface owner's lien for damages, §15-72-213.

Wild or out of control wells.

Action by commission to control well.

Lien on well to recover expenses, §15-72-212.

Life estates.

Lease of oil, gas and mineral interests, §§15-73-301 to 15-73-309.

Limitation on production, §15-72-324.

Commission to prorate or distribute allowable production, §15-72-324.

Liquefied petroleum gas.

General provisions, §§15-75-101 to 15-75-407.

Lodges and societies.

Lease of oil, gas and mineral interests, §15-73-202.

Monopolies and restraint of trade.

Agreements to use secondary recovery methods.

Not in restraint of trade, §15-72-504.

Integration of production in drilling units.

No restraint of trade, §15-72-307.

Price discrimination in purchasing crude oil, §15-74-501.

OIL AND GAS —Cont'd**Motor vehicles.**

Oil and gas commission.

Authority to acquire and maintain automobiles, §15-71-113.

Exemption from registration regulations, §15-71-113.

New research technology.

Tax exemption for increased production, §15-72-1003.

Notice.

Abandonment.

Notice of abandoned wells, §15-72-216.

Exploration or drilling.

Notice to surface owners of premises, §15-72-203.

Gasoline, fuel, illuminating and heating oil.

Testing of untested oil or gasoline before sale, §15-74-409.

Injunctions against commission, §15-72-107.

Leaks in natural gas apparatus, §15-72-210.

Lease of oil, gas and mineral interests.

Forfeiture of leases.

Notice to lessee to release forfeited lease, §15-73-204.

Wells.

Intent to drill, §15-72-205.

Wild or out of control wells, §15-72-212.

Oaths.

Commission, §15-71-102.

Administration of oaths, §15-71-104.

Orders.

Division order or declaration of interest in gas.

Information required, §15-74-101.

Integration of production in drilling units.

Salt water disposal unit operation.

Contents, §15-72-318.

Findings to support order requiring, §15-72-317.

Unit operation.

Contents of order, §15-72-310.

Findings to support order requiring unit operation, §15-72-309.

New unit operation order in pool established by previous order, §15-72-313.

Salt water disposal unit operation.

Enlarged operation of unit established by previous order, §15-72-321.

OIL AND GAS —Cont'd**Parties.**

Partition of oil and gas lease interests,
§15-73-402.

Effect of sale or lease, §15-73-408.

Necessary parties, §15-73-408.

Partition of oil and gas lease interests.

Allowed.

When no production and no
outstanding lease covering
entire leasehold estate,
§15-73-401.

Dower and curtesy.

Effect of sale or lease, §15-73-408.

Evidence authorizing lease,
§15-73-407.

Guardians.

Authority, §15-73-405.

Intervention, §15-73-404.

Lease of oil, gas and mineral interests
before sale, §15-73-406.

Appointment of receiver, §15-73-406.

By receiver, §15-73-406.

Lease of oil, gas and mineral interests
generally, §§15-73-201 to
15-73-309.

Necessary parties, §15-73-408.

Parties, §15-73-402.

Necessary parties, §15-73-408.

Petitions, §15-73-402.

Procedure, §15-73-407.

Receivers.

Lease before sale, §15-73-406.

Appointment of receiver,
§15-73-406.

By receiver, §15-73-406.

Effect, §15-73-406.

Retrial on motion of defendant
constructively summoned,
§15-73-409.

Summons and process, §15-73-403.

Trial.

Retrial on motion of defendant
constructively summoned,
§15-73-409.

When allowed, §15-73-401.

Penalties, §15-72-103.

Discrimination in purchasing crude
oil.

Treble damages, §15-74-501.

Disposal of salt water.

Unlawful disposal, §15-76-201.

Price discrimination in purchasing
crude oil, §15-74-501.

OIL AND GAS —Cont'd**Penalties —Cont'd**

Weights and measures.

Standard gas measurement law.

Sale or delivery of gas by volume.

Violation of provisions,
§15-74-305.

Wells.

Failure to confine gas within three
days, §15-72-208.

Petitions.

Integration of production in drilling
units.

Petition for unit operation,
§15-72-308.

Salt water disposal unit, §15-72-316.

Lease of oil, gas and mineral interests.

Life estates.

Lease by life tenant.

Determination by court,
§15-73-303.

Partition of oil and gas lease interests,
§15-73-402.

Underground storage of gas,
§15-72-606.

Pools.

Defined, §§15-72-102, 15-74-501.

Drilling units, §15-72-302.

Rules and regulations, §15-72-302.

Price discrimination in purchasing crude oil.

Construction and interpretation.

Cumulative effect of act, §15-74-501.

Crude oil from different pools,
§15-74-501.

Cumulative effect of act, §15-74-501.

Definitions.

Person, §15-74-501.

Pool, §15-74-501.

Penalties, §15-74-501.

Prohibited, §15-74-501.

Treble damages, §15-74-501.

Unfair discrimination, §15-74-501.

Proceeds.

Actions.

Nonpayment of proceeds,
§15-74-603.

Fraudulently withholding payment,
§15-74-602.

Interest.

Delinquent payment, §15-74-601.

Proportionate share of production.

Sale, §15-74-605.

Royalties.

Failure to pay, §15-74-604.

OIL AND GAS —Cont'd**Proceeds —Cont'd**

Time limits governing payments,
§15-74-601.

Interest.

Delinquent payments, §15-74-601.

Promotion of exploration for oil.

Bonus for discovery of commercial oil,
§15-72-702.

Certificate of discovery.

Commercial pools, §15-72-705.

Commission.

Powers, §15-72-608.

Credit against severance tax,
§15-72-706.

Definitions, §15-72-701.

Permits to drill discovery well.

Applications, §15-72-703.

Approval of application,
§15-72-704.

Revenue commissioner.

Powers, §15-72-608.

Rules and regulations, §15-72-608.

Proportionate share of production.

Sale.

Proceeds, §15-74-605.

Public policy declarations,

§15-72-101.

Public utilities.

Underground storage of gas generally,
§15-72-601 to 15-72-608.

Receivers.

Partition of oil and gas lease interests.

Lease before sale, §15-73-406.

Appointment of receiver,
§15-73-406.

By receiver, §15-73-406.

Records.

Gasoline, fuel, illuminating and
heating oil.

Inspection of records, §15-74-408.

Commissioner of revenues to keep
records of inspections,
§15-74-410.

Records kept by dealers, §15-74-408.

Log of well drilled, §15-72-207.

Weights and measures.

Crude petroleum oil, §15-74-201.

Oil removed from lease, §15-74-202.

Recovery.

Enhanced recovery.

Tax incentives, §15-72-1001.

Exemption for increased
production as a result of new
technology, §15-72-1003.

Reestablishment of inactive wells
and fields, §15-72-1002.

OIL AND GAS —Cont'd**Reestablishment of inactive wells
and fields.**

Tax incentive, §15-72-1002.

Rent.

Lease of oil, gas and mineral interests.

Forfeiture of leases.

Failure to pay rental installment,
§15-73-205.

Reports.

Falsification or mutilation of reports,
§15-72-104.

Weights and measures.

Standard gas measurement law.

Gas production, §15-74-304.

**Restoration of land after spills of
crude oil or produced water,**

§15-72-219.

Revenue commissioner.

Promotion of exploration for oil.

Powers of commission, §15-72-608.

Royalties.

Contracts for purchase at lesser price,
§15-74-706.

Default or delinquency by lessees or
others responsible for payment,
§15-74-709.

Lease of oil, gas and mineral interests.

Life estates, §15-73-304.

Lessee receiving more than share from
sale, §15-74-708.

Forfeiture of lease, §15-74-708.

Purchaser to pay treble value,
§15-74-708.

Misdemeanors.

Willful or malicious violations of
provisions, §15-74-701.

Monthly statements furnished royalty
owner, §15-74-707.

Partial payment of production costs.

Payment without paying share to
royalty interest unlawful,
§15-74-704.

Payment in lieu of drilling off-set
wells, §15-74-702.

Drilling wells in adjacent units,
§15-74-702.

Premiums and bonuses.

Giving without paying royalty
interests unlawful, §15-74-704.

Royalty interests entitled to,
§15-74-703.

Price of royalty gas.

Lesser price than paid to operator or
lessee unlawful, §15-74-706.

Purchasers to pay same price as
operator or lessee is paid,
§15-74-705.

OIL AND GAS —Cont'd**Royalties —Cont'd**

Purchasers to pay same price for royalty gas as operator or lessee is paid for his interest, §15-74-705.

Time for payment.

Monthly statements furnished royalty owner, §15-74-707.

Same time lessee or producer is paid, §15-74-707.

Waiver, §15-74-707.

Rules and regulations.

Commission.

Adoption, §15-71-111.

Pools, §15-72-302.

Promulgation by commission, §15-71-110.

Votes necessary for adoption, §15-71-103.

Gasoline, fuel, illuminating and heating oil.

Promulgation, §15-74-402.

Pools, §15-72-302.

Promotion of exploration of oil, §15-72-608.

Weights and measures.

Crude petroleum oil, §15-74-201.

Sales.

Illegal oil and gas.

Bringing action for seizure and sale, §15-72-402.

Sale, purchase or acquisition prohibited, §15-72-401.

Seizure and sale.

Application of proceeds, §15-72-406.

Natural gas.

Sale or delivery by volume.

Standard gas measurement law, §15-74-305.

Proceeds of sale, §§15-74-601 to 15-74-605.

Proportionate share of production.

Proceeds, §15-74-605.

Salt water.

Brine production, §§15-76-301 to 15-76-324.

Searches and seizures.

Containers bearing owner's identification.

Search warrants, §15-75-406.

Illegal oil and gas.

Bringing action for seizure and sale, §15-72-402.

Order of seizure, §15-72-404.

OIL AND GAS —Cont'd**Secondary recovery.**

Advisability of secondary recovery methods.

Submission of findings to landowners, §15-72-503.

Agreements to use methods.

Not in restraint of trade, §15-72-504.

Definitions, §15-72-501.

Investigation of use of methods, §15-72-502.

Submission of findings to landowners, §15-72-503.

Methods, §15-72-501.

Self-incrimination.

Commission.

Witnesses, §15-71-112.

Severance tax.

General provisions, §15-72-702.

Standard gas measurement law,

§§15-74-301 to 15-74-305.

Storage of gas.

Underground storage, §§15-72-601 to 15-72-608.

Summons and process.

Commission.

Witnesses, §15-71-112.

Documents, §15-71-112.

Failure to produce documents, §15-71-112.

Illegal oil and gas.

Issuance of summons, §15-72-403.

Partition of oil and gas lease interests, §15-73-403.

Taxation.

Severance tax.

General provisions, §15-72-702.

Tax incentives.

Enhanced recovery, §15-72-1001.

Exemption for increased production as a result of new technology, §15-72-1003.

Reestablishment of inactive wells and fields, §15-72-1002.

Transportation of compressed gases.

Accidents.

Liability not precluded for gross negligence or intentional misconduct, §15-75-109.

Nonliability of persons rendering aid, §15-75-109.

Transporters of gas not immune from liability, §15-75-109.

OIL AND GAS —Cont'd**Trial.**

- Partition of oil and gas lease interests.
- Retrial on motion of defendant constructively summoned, §15-73-409.

Trusts and trustees.

- Lease of oil, gas and mineral interests.
- Life estates, §§15-73-304, 15-73-306.

Underground storage of gas.

- Authority of commission, §15-72-603.
- Certificate of commission, §15-72-605.
- Citation of subchapter, §15-72-601.
- Commission.
 - Authority of commission, §15-72-603.
 - Certificate of commission, §15-72-605.
- Condemnation of subsurface stratum or formation, §15-72-604.
- Definitions, §15-72-602.
- Eminent domain.
 - Condemnation of subsurface stratum or formation, §15-72-604.
- Ownership of gas, §15-72-607.
 - Deemed property of injector, §15-72-607.
- Petitions to circuit court, §15-72-606.
 - Examination and determination, §15-72-606.
- Public interest and welfare, §15-72-603.
- Short title, §15-72-601.
- Storage facilities.
 - Operations, §15-72-604.
- Subsequent proceedings, §15-72-606.

Unfair trade practices.

- Price discrimination in purchasing crude oil, §15-74-501.

Venue.

- Prosecution of violations, §15-72-103.

Waiver.

- Royalties.
- Time for payment, §15-74-707.

Waste.

- Prohibited, §15-72-105.

Weights and measures.

- Crude petroleum oil.
 - Measured in gauge-tanks, §15-74-201.
 - Exception, §15-74-201.
 - Rules and regulations, §15-74-201.
- Lease of oil, gas and mineral interests.
 - Leasehold interest separable.
 - Violation by one party, §15-74-202.
- Oil removed from lease to be measured.
 - Cancellation of leasehold interest for violation, §15-74-202.

OIL AND GAS —Cont'd**Weights and measures —Cont'd**

- Lease of oil, gas and mineral interests —Cont'd
 - Oil removed from lease to be measured —Cont'd
 - Lease voidable upon violation of measurement provision, §15-74-202.
- Oil and gas commission.
 - Supervisory control, §15-74-201.
- Oil removed from lease.
 - Leasehold interest separable in violation by one party, §15-74-202.
 - Lease voidable upon violation of measurement provision, §15-74-202.
 - Records kept, §15-74-202.
 - Exception, §15-74-202.
 - To be measured, §15-74-202.
 - Violation of measurement provision.
 - Cancellation of leasehold interest, §15-74-202.
 - Lease voidable, §15-74-202.
- Purchases measured on one hundred percent tank-tables, §15-74-203.
 - Corrections for temperature, §15-74-203.
 - Discounts for waste or shrinkage unlawful, §15-74-203.
- Misdemeanor for violations, §15-74-203.
- Records.
 - Oil measurement, §15-74-201.
 - Oil removed from lease, §15-74-202.
 - Exceptions, §15-74-202.
- Rules and regulations.
 - Crude petroleum oil, §15-74-201.
- Standard gas measurement law.
 - Actions.
 - Sale or delivery of gas by volume.
 - Civil action for damages, §15-74-305.
 - Citation of act, §15-74-301.
 - Cubic foot of gas.
 - Defined, §15-74-302.
 - Definitions.
 - Cubic foot of gas, §15-74-302.
 - Determination of specific gravity and flowing temperature, §15-74-303.
 - Flowing temperature determination, §15-74-303.
 - Penalties.
 - Sale or delivery of gas by volume.
 - Violation of provisions, §15-74-305.

OIL AND GAS —Cont'd**Weights and measures —Cont'd**

Standard gas measurement law

—Cont'd

Reports.

Gas production, §15-74-304.

Sale or delivery of gas by volume,
§15-74-305.Civil action for damages,
§15-74-305.

Contract provisions, §15-74-305.

Measurement, §15-74-305.

Penalties, §15-74-305.

Short title, §15-74-301.

Specific gravity determination,
§15-74-303.**Wells.**

Abandoned wells.

Abandoned and orphaned well
plugging fund, §15-71-115.Administration of program and
fund, §15-71-110.

Notice of abandonment, §15-72-216.

Plugging dry or abandoned wells,
§§15-72-216, 15-72-217.

Penalty for violation, §15-72-202.

Right of another to plug well,
§15-72-218.

Lien on property, §15-72-218.

Casing oil or gas wells, §15-72-206.

Different oil or gas bearing sands
kept separate, §15-72-206.

Penalty for violation, §15-72-202.

Confinement of gas.

Confining gas in well until used,
§15-72-208.

Penalty for violation, §15-72-202.

Failure to confine gas, §15-72-209.

In well until used, §15-72-208.

Penalties.

Failure to confine.

Within three days, §15-72-208.

Rights of others to confine gas,
§15-72-209.

Recovery of expenses, §15-72-209.

Within three days, §15-72-208.

Penalty for violation, §15-72-208.

Definitions, §15-72-201.

Drilling of wells.

Fees, §15-72-205.

Notice of intent to drill,
§15-72-205.Surface owner of premises,
§15-72-203.

Permits.

Filing of proof of financial
responsibility, §15-72-204.**OIL AND GAS —Cont'd****Wells —Cont'd**

Exploration or drilling.

Notice to surface owner, §15-72-203.

Fees.

Drilling of wells, §15-72-205.

Liquid hydrocarbon, wells
producing, §15-71-116.Flambeau lights prohibited,
§15-72-211.Gas confined in well until used,
§15-72-208.

Penalty for violations, §15-72-202.

Leaks in natural gas apparatus.

Duty to repair, §15-72-210.

Notice, §15-72-210.

Liability of operator.

Proof of financial responsibility,
§15-72-214.

Liens.

Surface owner's liens for damages,
§15-72-213.

Liquid hydrocarbon, wells producing.

Fees, §15-71-116.

Log of well drilled, §15-72-207.

Filing, §15-72-207.

Notice.

Abandoned wells.

Notice of abandonment,
§15-72-216.

Exploration of drilling.

Notice to owner of premises,
§15-72-203.

Intent to drill, §15-72-205.

Operators.

Claims for damages, §15-72-214.

Rights subordinated, §15-72-214.

Liability, §15-72-214.

Penalties.

Casing oil or gas wells.

Violation of provisions,
§15-72-202.

Failure to confine gas.

Within three days, §15-72-208.

Gas confined in well until used.

Violations of provisions,
§15-72-202.

Plugging dry or abandoned wells.

Violation of provisions,
§15-72-202.Violation of certain sections,
§15-72-202.

Permits.

Drilling of wells.

Filing of proof of financial
responsibility, §15-72-204.

OIL AND GAS —Cont'd**Wells —Cont'd**

- Plugging dry or abandoned wells, §§15-72-216, 15-72-217.
- Abandoned and orphaned well plugging fund, §15-71-115.
- Administration of program and fund, §15-71-110.
- Penalty for violations, §15-72-202.
- Right of another to plug well, §15-72-218.
- Lien on property, §15-72-218.
- Records.
 - Log of well drilled, §15-72-207.
- Violation of certain sections.
 - Penalties, §15-72-202.
- Wild or out of control wells.
 - Action by commission to control well, §15-72-212.
 - Lien on well, §15-72-212.
 - Recovery of expenses, §15-72-212.
 - Lien on well, §15-72-212.
 - Failure to control wild well unlawful, §15-72-212.
 - Notice to owner, §15-72-212.

OPEN-CUT LAND RECLAMATION.**Administration, §15-57-306.****Bonds.**

- Operator's bond, §15-57-316.
- Forfeiture proceedings, §15-57-317.

Citation, §15-57-301.**Definitions, §15-57-303.****Enforcement of chapter, §15-57-305.****Exemptions from chapter, §15-57-320.****Fund, §15-57-319.****Inspections.**

- Entry onto lands, §15-57-309.

Operator's duties, §15-57-315.**Penalties, §15-57-305.****Permits.**

- Application process, §15-57-311.
- Extension of permit, §15-57-314.
- Permit as state property, §15-57-312.
- Requirement, §15-57-310.
- Withdrawal of land covered by, §15-57-313.

Policy declaration, §15-57-302.**Quarry operation, reclamation and safe closure act, §§15-57-401 to 15-57-414.****Registration of existing mines, §15-57-318.****Rules and regulations, §15-57-307.****Surface coal mining and reclamation, §§15-58-101 to 15-58-510.****Technical and financial assistance, §15-57-308.****OPEN-CUT LAND RECLAMATION****—Cont'd****Violations of chapter, §15-57-304.****ORDERS.****Brine production.**

- Formation of brine production units, §15-76-310.
- Contents of order, §15-76-311.

Judgments. -

- State lands.
 - Unlawful cutting or removal.
 - Disposition of logs under judgment, §15-32-306.

Mines and minerals.

- Lease of mineral rights.
- Life tenants.
 - Order authorizing execution of lease, §15-56-405.
 - Title of contingent remaindermen divested.
 - By order confirming lease, §15-56-408.

Natural resources commission.

- Appeals, §15-22-209.
- Procedure for making, §15-22-206.

Oil and gas.

- Division order or declaration of interest in gas.
- Information required, §15-74-101.
- Integration of production in drilling units.
- Salt water disposal unit operation.
 - Contents, §15-72-318.
 - Findings to support order requiring, §15-72-317.
- Unit operation.
 - Contents, §15-72-310.
 - Findings to support order, §15-72-309.
- New unit operation order in pool established by previous order, §15-72-313.
- Salt water disposal unit operation.
 - Enlarged operation of unit established by previous order, §15-72-321.

Prosecuting attorneys.

- State lands.
 - Unlawful cutting or removal.
 - Acting on behalf of state, §15-32-307.

Sales.

- State lands.
 - Unlawful cutting or removal.
 - Disposition of logs under judgment, §15-32-306.
 - Proceeds of sale, §15-32-308.

ORDERS —Cont'd**Surface coal mining and reclamation.**

Civil enforcement.

Restraining orders, §15-58-308.

Imminent danger or harm.

Conditions, practices and violations creating.

Cessation orders, §15-58-302.

Conditions, practices and violations not creating.

Cessation order, §15-58-301.

Pattern violations.

Revocation or suspension of permit.

Order to show cause, §15-58-303.

Trees and timber.

State lands.

Unlawful cutting or removal.

Warning orders, §15-32-305.

OUACHITA RIVER.**Commission**, §§15-23-801 to 15-23-806.**OUACHITA RIVER COMMISSION,**

§§15-23-801 to 15-23-806.

Construction of subchapter,

§15-23-802.

Created, §15-23-803.**Funding**, §15-23-805.**Legislative intent**, §15-23-801.**Members**, §15-23-804.**Powers and duties**, §15-23-803.**Trust fund, Ouachita river****waterways project**, §15-23-806.**P****PARKS AND RECREATION.****Department of parks and tourism.**

Duties.

State publicity, §15-11-101.

State publicity.

Duties as to, §15-11-101.

Tourist information centers.

Lease of facilities for.

Authority of department,
§15-11-306.**Keep Arkansas Beautiful****Commission**, §§15-11-601 to
15-11-604.**Wildlife observation trails.**Pilot program, §§15-11-701 to
15-11-709.**Wildlife recreation facilities pilot
program**, §§15-47-101 to 15-47-105.**PARTIES.****Mines and minerals.**

Lease of mineral rights.

Parties in interest, §15-56-303.

PARTIES —Cont'd**Mines and minerals —Cont'd**

Lease of mineral rights —Cont'd

Right to appear or intervene,
§15-56-303.**Oil and gas.**Partition of oil and gas lease interests,
§15-73-402.

Effect of sale or lease, §15-73-408.

Necessary parties, §15-73-408.

PARTITION.**Guardians.**Oil and gas lease interests,
§15-73-405.**Oil and gas.**Partition of oil and gas lease interests,
§§15-73-401 to 15-73-409.**PETITIONS.****Brine production.**Formation of brine production units,
§15-76-309.**Oil and gas.**Integration of production in drilling
units.Petition for unit operation,
§15-72-308.

Salt water disposal unit, §15-72-316.

Lease of oil, gas and mineral interests.
Life estates.

Lease by life tenant.

Determination by court,
§15-73-303.Partition of oil and gas lease interests,
§15-73-402.Underground storage of gas,
§15-72-606.**Sparta aquifer critical groundwater
counties.**

Conservation boards.

Establishment, §§15-22-1205,
15-22-1206.Nominations for membership,
§15-22-1209.**PETROLEUM PRODUCTS TANKS.****Bond issues.**Petroleum storage tank trust fund
bond financing, §§15-5-1201 to
15-5-1210.**Liquefied petroleum gas.**General provisions, §§15-75-101 to
15-75-407.**Petroleum storage tank trust fund
bond financing**, §§15-5-1201 to
15-5-1210.**Trust fund.**Petroleum storage tank trust fund
bond financing, §§15-5-1201 to
15-5-1210.

PETROLEUM STORAGE TANK TRUST FUND BOND

FINANCING, §§15-5-1201 to 15-5-1210.

Applicability of other laws, §15-5-1210.

Bond issues, §15-5-1204.

Refunding bonds, §15-5-1208.

Tax exemption for interest, §15-5-1206.

Citation, §15-5-1201.

Debt service fund, §15-5-1205.

Expiration of provision, §15-5-1207.

Payment of debt service, §15-5-1206.

Tax exemption on interest, §15-5-1206.

Definitions, §15-5-1203.

Eligible security, §15-5-1209.

Fees.

Pledged fees, §15-5-1205.

Goals, §15-5-1202.

Other laws, §15-5-1210.

Outstanding bonds.

Refunding, §15-5-1208.

Public funds.

Eligible to secure, §15-5-1209.

Purpose, §15-5-1202.

Refunding bonds, §15-5-1208.

Scope, §15-5-1210.

Security available, §15-5-1209.

Title, §15-5-1201.

PLANE COORDINATES.

Coordinate system, §§15-21-301 to 15-21-310.

PLANNING.

Natural resources commission.

Arkansas water plan, §15-22-503.

Publication, §15-22-504.

Workforce investment act.

Local plan for workforce investment system strategy, §15-4-2212.

State plan for workforce investment system strategy, §15-4-2207.

POINT REMOVE CREEK DEVELOPMENT AUTHORIZATION ACT, §15-23-106.

POLLUTION.

Caves, §15-20-604.

Department of environmental quality.

Brine production.

Jurisdiction of department not affected, §15-76-324.

Financing of pollution abatement, §§15-22-701 to 15-22-721.

POLLUTION —Cont'd

Kings river.

Existing rights and duties.

Effect, §15-23-104.

Legislative findings, §15-23-104.

Prohibited acts, §15-23-104.

Saving clause, §15-23-104.

Poultry feeding operations.

Litter management.

Registration with natural resources commission, §§15-20-901 to 15-20-906.

Soil nutrient application and poultry litter utilization.

General provisions, §§15-20-1101 to 15-20-1114.

Soil nutrient management planners and applicators.

Certification, §§15-20-1001 to 15-20-1008.

Surplus nutrient removal incentives, §§15-20-1201 to 15-20-1206.

POOLED LOAN SECURITIZATION ACT.

Natural resources commission, §§15-20-801 to 15-20-804.

POSTDOCTORAL SCIENCE AND ENGINEERING GRANT PROGRAM FOR ECONOMIC DEVELOPMENT AND KNOWLEDGE-BASED JOB GROWTH, §§15-3-401 to 15-3-405.

POTEAU RIVER WATERSHED.

Nutrient surplus areas.

Areas declared, §15-20-1104.

POULTRY.

Feeding operations.

Litter management.

Registration with natural resources commission, §§15-20-901 to 15-20-906.

Soil nutrient application and poultry litter utilization.

Regulation, §§15-20-1101 to 15-20-1114.

Surplus nutrient removal incentives, §§15-20-1201 to 15-20-1206.

Litter management.

Feeding operations.

Registration with natural resources commission, §§15-20-901 to 15-20-906.

Soil nutrient application and poultry litter utilization.

Regulation, §§15-20-1101 to 15-20-1114.

POULTRY —Cont'd**Litter management —Cont'd**

Soil nutrient management planners and applicators.

Certification, §§15-20-1001 to 15-20-1008.

Surplus nutrient removal incentives, §§15-20-1201 to 15-20-1206.

Registration with natural resources commission.

Feeding operations, §§15-20-901 to 15-20-906.

Soil nutrient management planners and applicators.

Certification, §§15-20-1001 to 15-20-1008.

Waste management.

Feeding operation.

Registration with natural resources commission, §§15-20-901 to 15-20-906.

Soil nutrient application and poultry litter utilization.

Regulation, §§15-20-1101 to 15-20-1114.

Soil nutrient management planners and applicators.

Certification, §§15-20-1001 to 15-20-1008.

Surplus nutrient removal incentives, §§15-20-1201 to 15-20-1206.

POULTRY FEEDING OPERATIONS.**Registration with natural resources commission, §§15-20-901 to 15-20-906.**

Action to collect penalties, §15-20-905.

Administrative penalties, §15-20-905.

Definitions, §15-20-903.

Disposition of fees and penalties, §15-20-906.

Enforcement by commission agents, §15-20-905.

Fee, §15-20-904.

Findings of general assembly, §15-20-902.

Information required to be submitted, §15-20-904.

Legislative intent, §15-20-902.

Required, §15-20-904.

Right to enter private property.

Commission agents, §15-20-905.

Title of act, §15-20-901.

Water development fund.

Disposition of fees and penalties, §15-20-906.

PRESUMPTIONS.**Fishing.**

Taking fish from fish farm unlawful.
Rebuttable presumption, §15-43-330.

PRIORITIES.**Surface coal mining and reclamation.**

State abandoned mine reclamation program priorities, §15-58-403.

PROSECUTING ATTORNEYS.**Orders.**

State lands.

Unlawful cutting or removal.

Acting on behalf of state,
§15-32-307.

Trees and timber.

State lands.

Unlawful cutting or removal.

Criminal prosecutions, §15-32-307.

PUBLICATION.**Natural resources commission.**

State water plan, §15-22-504.

PUBLIC FUNDS.**Abandoned and orphaned well plugging fund, §15-71-115.****Arkansas research matching fund, §§15-3-201 to 15-3-208.****Brownfield revolving loan fund, §§15-5-1501 to 15-5-1511.****Capital access program for small businesses, §15-5-1105.****Construction assistance revolving loan fund.**

Water, wastewater, solid and hazardous waste facilities,
§§15-5-901 to 15-5-910.

Corrections.

Correction facilities construction fund,
§§15-5-213, 15-5-422.

Debt service fund.

Petroleum storage tank trust fund bond financing.

Expiration of provision, §15-5-1207.

Payment of debt service, §15-5-1206.

Pledged fees, §15-5-1205.

Tax exemption on interest,
§15-5-1206.

Development finance authority.

Disposition and use of funds,
§15-5-209.

Economic development incentive fund, §§15-4-1603, 15-4-3106.**Economic development superprojects project fund, §15-4-3012.****Economic incentive fund.**

Consolidated incentive act, §15-4-2707.

PUBLIC FUNDS —Cont'd**Fishing.**

Beaver control fund.

Development of public hunting and fishing areas, §15-42-125.

Game protection fund.

Fines to fund, §15-41-209.

Interest, §15-41-110.

Housing trust fund, §§15-5-1701 to 15-5-1709.**Hunting.**

Bearer control fund, §15-42-125.

Inventor's assistance program fund, §15-4-1408.**Land reclamation fund, §15-57-319.****Liquefied petroleum gas.**

Liquefied petroleum gas fund, §15-75-106.

Fines, penalties, forfeitures and moneys.

Credited towards, §15-75-321.

Major industry facilities incentive fund, §15-4-1808.**Natural resources commission.**

Water development fund, §15-22-507.

Fees and earnings to fund, §15-22-514.

Ouachita river waterways project trust fund, §15-23-806.**Petroleum products tanks.**

Storage tanks of regulated substances.

Petroleum storage tank trust fund.

Bond financing, §§15-5-1201 to 15-5-1210.

Port priority improvement fund, §15-23-903.**Research matching fund, §§15-3-201 to 15-3-208.****Safe drinking water fund,**

§§15-22-1101 to 15-22-1112.

Science and technology authority.

Arkansas research matching fund, §§15-3-201 to 15-3-208.

Endowment fund, §15-3-118.

Investment of assets, §15-3-119.

Investment fund, §15-3-120.

Authorized uses, §15-3-121.

Purchase of qualified securities, §15-3-122.

Surface coal mining operation fund, §15-58-508.**Water development fund.**

Deposit in wetlands mitigation banks, §15-22-1010.

Water resources.

Cost share revolving fund, §15-22-808.

Water resources cost share revolving fund, §15-22-808.**PUBLIC OFFICERS AND EMPLOYEES.****Trees and timber.**

County timber inspectors, §§15-32-201 to 15-32-208.

PUBLIC PURCHASING AND CONTRACTING.**Fees.**

Trees and timber.

Based upon volume or weight.

Actions to recover correct purchase price.

Attorney's fees, §15-32-413.

State publicity.

Printed material and specialty items for advertising purposes.

Rules and procedures governing purchase, §15-11-102.

PUBLIC UTILITIES.**Environmental quality.**

Exemptions from certain provisions, §15-20-316.

Oil and gas.

Underground storage of gas generally, §§15-72-601 to 15-72-608.

Surface coal mining and reclamation.

Compliance with provisions, §15-58-105.

PUNITIVE DAMAGES.**Timber from state lands.**

Unlawful cutting or removal, §15-32-301.

Q**QUARRIES, §§15-57-401 to 15-57-414.****Bonds, surety.**

Submission by operator, §15-57-412.

Definitions, §15-57-402.**Distribution of fees and fines, §15-57-414.****Enforcement hearings, §15-57-413.****Notification of exhausted quarry, §15-57-408.****Notification of intent to quarry.**

Contents, §15-57-404.

Filing, §15-57-403.

Refiling, §15-57-407.

Notification of reactivated quarry.

Contents, §15-57-406.

Filing, §15-57-403.

Notification of temporarily closed quarry.

Contents, §15-57-405.

Refiling, §15-57-407.

QUARRIES —Cont'd

Reclamation of land at exhausted site, §15-57-409.

Response to notifications, §15-57-403.

Safety measures, §15-57-410.

Title of act, §15-57-401.

Violations of subchapter, §15-57-411.

QUICKSILVER.

Mercury refiners and businesses, §§15-60-101 to 15-60-115.

R**RACIAL MINORITIES.****Economic development.**

Minority business economic development, §§15-4-301 to 15-4-314.

Science and technology authority.

Assistance to minority businesses, §15-3-117.

RAILROADS.**Coal.**

Short line railroads, §§15-56-501 to 15-56-505.

Environmental quality.

Exemptions from certain provisions, §15-20-316.

Mines and minerals.

Short line railroads, §§15-56-501 to 15-56-505.

Short line railroads.

Mines and minerals, §§15-56-501 to 15-56-505.

State parks, recreation and travel commission.

Disposal of railroad track material.
Gift or contract to a regional intermodal facilities authority, §15-11-211.

REAL PROPERTY.**Surface coal mining and reclamation.**

Designating land as unsuitable for surface coal mining, §15-58-501.
Lands eligible under state abandoned land reclamation programs, §15-58-401.
Use of acquired lands, §15-58-407.
Public hearing, §15-58-407.

REAL PROPERTY TRANSFER TAX.**Additional tax.**

Disposition of revenues, §15-12-103.

Disposition of revenues.

Additional tax, §15-12-103.

REAL PROPERTY TRANSFER TAX

—Cont'd

Natural and cultural resources council.

Disposition of revenues from additional tax, §15-12-103.

REBATES.

Digital product and motion picture industry development, §§15-4-2001 to 15-4-2011.

RECEIVERS.**Oil and gas.**

Partition of oil and gas lease interests.
Lease before sale, §15-73-406.
Appointment of receiver, §15-73-406.
By receiver, §15-73-406.

RECIPROCITY.**Fishing.**

Nonresident licenses for nonresidents over 65, §15-42-126.

Hunting.

Nonresident licenses for nonresidents over 65, §15-42-126.

RECLAMATION.**Coal.**

Surface coal mining and reclamation, §§15-58-101 to 15-58-510.

Mines and minerals.

Surface coal mining and reclamation, §§15-58-101 to 15-58-510.

Quarries.

Operation, reclamation and safe closure act, §§15-57-401 to 15-57-414.

Surface coal mining and

reclamation, §§15-58-101 to 15-58-510.

RECORDATION OF DOCUMENTS.**Artesian wells.**

Abandoned wells.
Sealing by county judge upon failure of landowner.
Expense statement recorded as part of deed, §15-22-406.
Unlawful to record deed without payment of recorded expenses, §15-22-407.

Capital development companies.

Articles, §15-4-1012.

Claims on public lands.

Mines and minerals, §§15-56-201 to 15-56-205.

Mines and minerals.

Claims on public lands, §§15-56-201 to 15-56-205.

RECORDATION OF DOCUMENTS

—Cont'd

Trees and timber.

- Measuring and marking logs.
- Mortgages and sales of marked logs to be recorded, §15-32-407.
- Recording of marks, §15-32-405.

RECORDS.**Forests and forestry.**

- Commission, §15-31-103.

Geological survey.

- Free access to public records, §15-55-302.

Oil and gas.

- Gasoline, fuel, illuminating and heating oil.
- Inspection of records, §15-74-408.
- Commissioner of revenues to keep records of inspections, §15-74-410.
- Records kept by dealers, §15-74-408.
- Log of well drilled, §15-72-207.
- Weights and measures.
- Crude petroleum oil, §15-74-201.
- Oil removed from lease, §15-74-202.

Water supply and waterworks.

- Willful violation of safe drinking water act, §15-72-104.

RECYCLING.**Facilities.**

- Bonds to finance.
 - Water resources bonds generally, §§15-22-1301 to 15-22-1313.
 - Construction assistance revolving loan fund, §§15-5-901 to 15-5-910.
- Steel manufacturers tax incentives.**
- Post consumer waste.
 - Good faith effort to use, §15-4-2405.
 - Recycling tax credit.
 - Extension of, §15-4-2405.
 - Refund of, §15-4-2406.

RED RIVER.**Compact**, §§15-23-501 to 15-23-503.**RED RIVER COMPACT.****Commission**, §15-23-501.

- Designation of commissioners representing Arkansas, §15-23-503.

Effective date, §15-23-502.**Enactment**, §15-23-501.**General provisions**, §15-23-501.**Text**, §15-23-501.**REFINERIES.****Mercury refiners and businesses**, §§15-60-101 to 15-60-115.**REGIONAL TOURIST PROMOTION****AGENCIES**, §§15-11-401 to 15-11-410.**REGISTRATION.****Digital product and motion picture industry development.**

- Registration of production company, §15-4-2004.

Liquefied petroleum gas.

- Schedule of registration fees, §15-75-105.

Natural resources commission.

- Diversion of water.
- Certificate of registration, §15-22-215.

Poultry feeding operations.

- Litter management.
- Registration with natural resources commission, §§15-20-901 to 15-20-906.

REMAINDERS, REVERSIONS AND EXECUTORY INTERESTS.**Mines and minerals.**

- Lease of mineral rights.
- Life tenants.
- Title of contingent remaindermen.
- Divested by order confirming lease, §15-56-408.
- Trustee for interests of remaindermen, §15-56-405.

Oil and gas.

- Lease of oil, gas and mineral interests.
- Conveyances by reversioner or remaindermen to life tenant or lessee.
- Binding in certain cases, §15-73-309.
- Life estates.
- Confirmation order.
- Divests title of contingent remaindermen, §15-73-307.
- Trustee for remaindermen, §§15-73-304, 15-73-306.
- Accounts and accounting, §15-73-306.
- Additional bond, §15-73-306.
- Bonds, surety, §§15-73-304, 15-73-306.
- Compensation, §15-73-306.
- Investment of funds, §15-73-306.
- Removal or resignation, §15-73-306.
- Royalties, §15-73-304.
- Successor, §15-73-306.

Trusts and trustees.

- Lease of oil, gas and mineral interests.
- Life estates, §§15-73-304, 15-73-306.

REMEDIES.**Water resources development.**

Bond issues.

Bondholders' remedies, §15-22-618.

RENT.**Oil and gas.**

Lease of oil, gas and mineral interests.

Forfeiture of leases.

Failure to pay rental installment,
§15-73-205.**REPORTS.****Amendment 82 bond financing.**

Monitoring and reporting, §15-4-3221.

Public reporting requirements,
§15-4-3224.**Arkansas waterways commission.**

Biennial report, §15-23-204.

Capital development companies.Investment transactions and audit,
§15-4-1028.**Development finance authority.**

Annual report, §15-5-210.

Economic development council.

Annual report, §15-4-219.

Enterprise zone act.Economic development commission,
§15-4-1703.**Environmental quality.**

Natural heritage commission.

Annual report, §15-20-308.

Forests and forestry.

Commission.

Annual report to governor,
§15-31-106.**Game and fish.**

Fines, §15-41-209.

Geological survey, §15-55-301.**Information age communities
commission, §15-9-104.****Inventors assistance.**

Prototype development center.

Annual report to governor,
§15-4-1405.**Liquefied petroleum gas, §15-75-110.****Mines and minerals.**

Lease of mineral rights.

Failure of lessee to report output,
§15-56-311.

Felonies, §15-56-311.

Leases reported to court, §15-56-306.

Binding upon approval,
§15-56-306.**Natural resources commission.**Joint interim committee on agriculture
and economic development.

Periodic reports to, §15-22-301.

REPORTS —Cont'd**Natural resources commission**

—Cont'd

Water development projects.

Filing of report by other agencies,
§15-22-502.Withdrawal of underground water,
§15-22-302.**Oil and gas.**Falsification or mutilation of reports,
§15-72-104.

Misdemeanors, §15-72-104.

Weights and measures.

Standard gas measurement law.

Gas production, §15-74-304.

Science and technology authority.

Annual reports, §15-3-123.

Arkansas research matching fund,
§15-3-206.**Sparta aquifer critical groundwater
counties.**

Conservation boards.

Annual audit and report,
§15-22-1213.

False reports.

Criminal penalties, §15-22-1217.

Monthly report by registered and
significant water users,
§15-22-1215.Penalties for failure to report,
§15-22-1217.**Trees and timber.**

County timber inspectors.

State lands.

Unlawful cutting or removal.

Quarterly reports by inspectors,
§15-32-207.

Measuring and marking logs.

County timber inspector's reports to
legislature, §15-32-404.

State lands.

Unlawful cutting or removal.

Quarterly reports by county
timber inspectors, §15-32-207.**Venture capital investment.**

Annual report, §15-5-1408.

**Wetlands mitigation banks,
§15-22-1007.****Wildlife observation trails pilot
program, §15-11-709.****Wildlife recreation facilities pilot
program, §15-47-105.****Workforce investment act.**

Board, §15-4-2206.

RESEARCH.**Alternative fuels development,**

§§15-13-101 to 15-13-305.

RESEARCH —Cont'd

Arkansas research alliance act,
§§15-3-301 to 15-3-306.

Arkansas research matching fund,
§§15-3-201 to 15-3-208.

Centers for applied technology,
§§15-3-130 to 15-3-134.

Environmental quality.

Natural heritage commission.

Fees for research services,
§15-20-317.

Deposit of moneys, §15-20-319.

Powers and duties, §15-20-308.

Game and fish.

Refuges.

Collection for scientific study,
§15-45-210.

Matching fund, §§15-3-201 to 15-3-208.

Natural resources commission,
§15-22-220.

Science and technology authority.

Basic research at Arkansas colleges
and universities.

Advisory committees, §15-3-110.

Powers of authority as to, §15-3-109.

Rules and regulations, §15-3-110.

Definitions.

Applied research, §15-3-101.

Basic research, §15-3-101.

**RESEARCH AND DEVELOPMENT
TAX CREDIT, §15-4-2708.**

RESEARCH MATCHING FUND,
§§15-3-201 to 15-3-208.

RETIREMENT.**Economic development commission.**

Retirement community program,
§§15-14-101 to 15-14-108.

REWARDS.

Game and fish commission,
§15-41-115.

RIGHT OF ENTRY.

Liquefied petroleum gas.
Inspections, §15-75-209.

**Surface coal mining and
reclamation,** §15-58-405.

Surveys and surveyors.

State surveyor or employees of
division of land surveys,
§15-21-208.

RIGHTS OF WAY.**Mines and minerals.**

Short line railroads, §15-56-502.

RIVERS AND STREAMS.

Arkansas river basin compact,
§15-23-401.

**RIVERS AND STREAMS —Cont'd
Cache river.**

Navigability.

Declaration of nonnavigability,
§15-23-101.

Compacts.

Natural and scenic rivers system.

Proposed compacts with federal
government.

Approval of general assembly
required, §15-23-310.

Conservation.

Natural and scenic rivers system.

General provisions, §§15-23-301 to
15-23-315.

Conservation easements.

Natural and scenic rivers system.

Power of commission to obtain,
§15-23-309.

Construction and interpretation.

Natural and scenic rivers system,
§15-23-313.

Definitions.

Natural and scenic rivers system,
§15-23-303.

Eleven point river.

Use of motorboats prohibited,
§15-23-105.

Eminent domain.

Natural and scenic rivers system.

Commission not to have power of
eminent domain, §15-23-309.

Federal aid.

Natural and scenic river system.

Receipt by commission, §15-23-315.

General assembly.

Natural and scenic rivers system.

Proposed contracts and compacts
with federal government.

Approval of general assembly
required, §15-23-310.

Injunctions.

Natural and scenic rivers system.

Violations of provisions, §15-23-313.

Lee creek.

Development, §15-23-103.

Natural and scenic rivers system.

Advisory committees for rivers,
§15-23-311.

Composition, §15-23-311.

Creation, §15-23-311.

Duties, §15-23-311.

Citation of subchapter.

Short title, §15-23-301.

Commission.

Contracts for professional services,
§15-23-308.

Duties, §15-23-308.

RIVERS AND STREAMS —Cont'd
Natural and scenic rivers system
 —Cont'd

- Commission —Cont'd
 - Funding, §15-23-315.
 - Proposed contracts and compacts with federal government.
 - Approval of general assembly required, §15-23-310.
- Compacts.
 - Proposed compacts with federal government.
 - Approval of general assembly required, §15-23-310.
- Conservation easements.
 - Power of commission to obtain, §15-23-309.
- Construction and interpretation, §15-23-313.
- Protection of private lands, §15-23-314.
- Continued uses.
 - Not affected by act, §15-23-313.
- Definitions, §15-23-303.
- Designation of river as component in system.
 - Method, §15-23-311.
- Designation of segments of rivers or streams, §15-23-313.
- Eleven point river.
 - Designation as a scenic river, §15-23-105.
- Eminent domain.
 - Commission not to have power of eminent domain, §15-23-309.
- Federal aid.
 - Receipt by commission, §15-23-315.
- Hearings.
 - Designation of river as to component into system, §15-23-311.
- Injunctions.
 - Violations of provisions, §15-23-313.
- Legislative declaration, §15-23-302.
- Management plans, §15-23-311.
 - Approval, §15-23-312.
- Mulberry river.
 - Subchapter not applicable to, §15-23-102.
- Policy of state, §15-23-302.
- Private lands.
 - Protection, §15-23-314.
- Prohibited acts, §15-23-313.
- Savings provision.
 - Continued uses not affected by act, §15-23-313.
- Title of subchapter.
 - Short title, §15-23-301.

RIVERS AND STREAMS —Cont'd
Natural and scenic rivers system
 —Cont'd

- United States.
 - Proposed contracts and compacts with federal government.
 - Approval of general assembly required, §15-23-310.
- Natural resources commission,** §§15-22-202, 15-22-205.
- Ouachita river.**
 - Commission, §§15-23-801 to 15-23-806.
- Point Remove Creek development authorization act,** §15-23-106.
- Red river compact,** §§15-23-501 to 15-23-503.
- United States.**
 - Natural and scenic rivers system.
 - Proposed contracts and compacts with federal government.
 - Approval of general assembly required, §15-23-310.

ROYALTIES.

Brine production, §15-76-314.

Leases.

- Oil, gas and mineral interests.
- Life estates, §15-73-304.

Mines and minerals.

- Lease of mineral rights.
- Life tenants.
 - Generally, §15-56-405.
 - Proportionate part of royalties vested in life tenant, §15-56-405.

RURAL DEVELOPMENT
AUTHORITY.

Economic development council, §15-4-213.

RURAL DEVELOPMENT
PROGRAM, §§15-6-101 to 15-6-107.

Arkansas rural development
commission.

- Defined, §15-6-103.
- Duties, §15-6-106.
- Established, §15-6-104.
- Members, §15-6-104.
- Powers, §15-6-106.
- Assistance programs,** §15-6-107.
- Citation of chapter,** §15-6-101.
- Definitions,** §15-6-103.
- Department of rural services.**
 - Creation, §15-6-105.
 - Director, §15-6-105.
 - Duties, §15-6-106.
 - Powers, §15-6-106.
- Economic development council,** §15-4-213.

RURAL DEVELOPMENT PROGRAM

—Cont'd

Findings of general assembly,
§15-6-102.**Grants,** §15-6-107.**Intent of general assembly,** §15-6-102.**Legislative declaration.**Findings and intent of general
assembly, §15-6-102.**Rules and regulations.**

Authority of commission, §15-6-104.

Title of chapter, §15-6-101.**S****SAFE DRINKING WATER FUND,**

§§15-22-1101 to 15-22-1112.

Administration, §15-22-1103.

Set aside account, §15-22-1104.

Authority to accept grants,

§15-22-1105.

Bonds issued by commission.Drinking water state revolving loan
fund account.

Use of account, §15-22-1109.

Capitalization grant agreements,

§15-22-1103.

Creation, §15-22-1102.**Definitions,** §15-22-1101.**Deposits,** §§15-22-1102, 15-22-1105.**Drinking water set aside account,**
§15-22-1102.

Administration, §15-22-1104.

**Drinking water state administrative
account,** §15-22-1102.**Drinking water state grants
account,** §15-22-1102.**Drinking water state revolving loan
fund account,** §15-22-1102.Removal of evidence of indebtedness
purchased, §15-22-1111.

Use, §15-22-1109.

Expenditures.

Terms and conditions, §15-22-1102.

Federal grants deposits, §15-22-1108.**Fees,** §15-22-1106.

Collection, §15-22-1107.

Interest on loans, §15-22-1112.**Priority list for financial assistance,**
§15-22-1103.**Removal of evidence of
indebtedness purchased with
fund money,** §15-22-1111.**Withholding general revenue
turnback,** §15-22-1110.**SALES.****Liquefied petroleum gas.**Area restrictions in permits,
§15-75-320.

Branch permits, §15-75-320.

Containers bearing owner's
identification, §15-75-406.Expansion of operations area,
§15-75-320.

Restrictions, §15-75-320.

Service personnel required,
§15-75-320.**Mines and minerals.**

Sale of lands or mineral rights.

Leases unaffected by sale,
§15-56-307.

Short line railroads, §15-56-502.

Oil and gas.

Illegal oil and gas.

Bringing action for seizure and sale,
§15-72-402.Sale, purchase or acquisition
prohibited, §15-72-401.

Seizure and sale.

Application of proceeds,
§15-72-406.**Natural gas.**

Volume sales or deliveries.

Standard gas measurement law,
§15-74-305.Proceeds of sale, §§15-74-601 to
15-74-605.

Proportionate share of production.

Proceeds of sale, §15-74-605.

Orders.

State lands.

Unlawful cutting or removal.

Disposition of logs under
judgment, §15-32-306.

Proceeds of sale, §15-32-308.

Trees and timber.

Measuring and marking logs.

Sales of marked logs to be recorded,
§15-32-407.

State lands.

Unlawful cutting or removal.

Disposition of logs under
judgment.Payment of funds into treasury,
§15-32-311.**Water resources development.**

Bond issues, §15-22-613.

SALES AND USE TAX.**Credits.**Investment tax incentives,
§§15-4-2706, 15-4-2711.Refund of sales and use tax,
§15-4-1704.

SALES AND USE TAX —Cont'd**Credits —Cont'd**

Technology-based enterprises,
§15-4-2706.

Enterprise zones, §15-4-1705.

Investment tax incentives,
§§15-4-2706, 15-4-2711.

Nonprofit incentive act of 2005.

Sales and use tax refund, §§15-4-3104,
15-4-3105, 15-4-3107.

Refund.

Investment tax incentives,
§§15-4-2706, 15-4-2711.

Technology-based enterprises.

Credits, §15-4-2706.

SALT WATER.

Brine production, §§15-76-301 to
15-76-324.

Oil and gas.

Disposal of salt water, §§15-76-201,
15-76-202.

SCENIC RESOURCES, §§15-20-701 to
15-20-708.

**Arkansas scenic resources
reservation coordinating
committee.**

Established, §15-20-707.

Meetings, §15-20-707.

Members, §15-20-707.

Duties, §15-20-708.

Reimbursement of necessary
expenses, §15-20-707.

Service without compensation,
§15-20-707.

Quorum, §15-20-707.

**Arkansas state parks, recreation
and travel commission.**

Duties, §15-20-705.

Citation of subchapter, §15-20-701.

Definitions, §15-20-703.

Department of parks and tourism.

Duties, §15-20-705.

Registry of scenic resources.

Maintenance by department,
§15-20-706.

Effect of subchapter, §15-20-704.

Policy of state, §15-20-702.

Private landowners' rights.

Subchapter not to affect, §15-20-704.

Registry.

Duties, §15-20-706.

Established, §15-20-706.

Preparation requirements, §15-20-706.

Repeal of other laws.

Effect of subchapter, §15-20-704.

Title of subchapter, §15-20-701.

SCHOOLS AND EDUCATION.

**Workforce investment board and
adult education study
committee**, §§15-4-2901, 15-4-2902.

**SCIENCE AND TECHNOLOGY
AUTHORITY**, §§15-3-101 to
15-3-135.

Appropriations.

Deposits, §15-3-116.

Arkansas research alliance act,
§§15-3-301 to 15-3-306.

Arkansas research matching fund,
§§15-3-201 to 15-3-208.

Audits, §15-3-116.

Body corporate and politic,
§15-3-108.

Centers for applied technology,
§§15-3-130 to 15-3-134.

Conflicts of interest, §15-3-112.

Construction and interpretation.
Liberal construction of chapter,
§15-3-102.

Contracts.

Personal interest prohibited,
§15-3-112.

Cooperation with other agencies,
§15-3-113.

Definitions, §15-3-101.

Deposits.

Revenues, §15-3-116.

Directors.

Appointment, §15-3-104.

Compensation, §15-3-104.

Composition, §15-3-104.

Executive committee.

Composition, §15-3-106.

Establishment, §15-3-106.

Meetings, §15-3-107.

Officers, §15-3-105.

Organization, §15-3-105.

Quorum, §15-3-107.

Endowment fund, §15-3-118.

Investment of assets, §15-3-119.

Establishment, §15-3-103.

Funds.

Arkansas research matching fund,
§§15-3-201 to 15-3-208.

Endowment fund, §15-3-118.

Investment of assets, §15-3-119.

Investment fund, §15-3-120.

Authorized uses, §15-3-121.

Purchase of qualified securities,
§15-3-122.

High technology industries.

Property used to develop.

Authority over, §15-3-114.

SCIENCE AND TECHNOLOGY AUTHORITY —Cont'd

Infrastructure.

Promotion of scientific, medical and technological jobs and infrastructure enhancements, §15-3-135.

Investments.

Endowment fund assets, §15-3-119.

Investment fund, §15-3-120.

Authorized uses, §15-3-121.

Purchase of qualified securities, §15-3-122.

Powers and duties of authority, §15-3-108.

Jobs.

Promotion of scientific, medical and technological jobs, §15-3-135.

Minority businesses.

Assistance to, §15-3-117.

Planning, §15-3-113.

Pledge of state credit or revenues, §15-3-115.

Powers and duties.

Additional powers and duties, §15-3-111.

Generally, §§15-3-108 to 15-3-110.

Pledge of state credit or revenue.

Restrictions, §15-3-115.

Promotion of scientific, medical and technological jobs and infrastructure enhancements, §15-3-135.

Property.

Authority over, §15-3-114.

Purposes, §15-3-103.

Qualified medical companies.

Promotion of scientific, medical and technological jobs and infrastructure enhancements, §15-3-135.

Racial minorities.

Assistance to minority businesses, §15-3-117.

Recommendations, §15-3-113.

Reports.

Annual reports, §15-3-123.

Arkansas research matching fund, §15-3-206.

Research.

Arkansas research matching fund, §§15-3-201 to 15-3-208.

Basic research at Arkansas colleges and universities.

Advisory committees, §15-3-110.

Powers of authority as to, §15-3-109.

Rules and regulations, §15-3-110.

SCIENCE AND TECHNOLOGY AUTHORITY —Cont'd

Research —Cont'd

Definitions.

Applied research, §15-3-101.

Basic research, §15-3-101.

Research matching fund, §15-3-202.

Revenues.

Deposit, §15-3-116.

Use, §15-3-117.

Securities.

Definition of "qualified security," §15-3-101.

Purchase of qualified securities, §15-3-122.

Advisory committees, §15-3-122.

Powers of authority, §§15-3-108, 15-3-122.

Studies, §15-3-113.

SEALS AND SEALED INSTRUMENTS.

Geological survey, §15-55-206.

Natural resources commission, §15-20-203.

SEARCHES AND SEIZURES.

Game and fish.

Authorized searches, §15-41-203.

Game wardens.

Authorized searches, §15-41-203.

Liquefied petroleum gas.

Containers bearing owner's identification.

Unlawful use of containers.

Search warrants, §15-75-406.

Oil and gas.

Containers bearing owner's identification.

Search warrants, §15-75-406.

Illegal oil and gas.

Bringing action for seizure and sale, §15-72-402.

Order of seizure, §15-72-404.

SEARCH WARRANTS.

Liquefied petroleum gas.

Containers bearing owner's identification.

Unlawful use of containers, §15-75-406.

SECRETARY OF STATE.

Trees and timber.

State lands.

Unlawful cutting or removal.

Certificate by secretary of land ownership.

Presumptive evidence, §15-32-310.

SECURITIES.**Science and technology authority.**

Definition of "qualified security,"
§15-3-101.

Purchase of qualified securities,
§15-3-122.

Advisory committees, §15-3-122.

Powers of authority, §§15-3-108,
15-3-122.

Water pollution abatement facilities bonds.

Characteristics of bonds, §15-20-1304.

SECURITIES REGULATION.**Exemption from registration.**

Industrial development.

County and regional industrial
development companies,
§15-4-1220.

Industrial development corporations,
§15-4-515.

SEISMIC OPERATIONS.**Permits.**

Required for field seismic operations,
§15-71-114.

SEISMOLOGICAL OBSERVATORY.

Duties, §15-21-602.

Established, §15-21-602.

Legislative intent, §15-21-601.

**Seismic network for monitoring
earthquake activity,** §15-21-603.

SELF-INCRIMINATION.**Oil and gas.**

Commission.

Witnesses, §15-71-112.

SENIOR CITIZENS.**Fishing licenses.**

Nonresident fishing license.

Reciprocity agreements, §15-42-126.

Resident fishing license.

Permanent license, §15-42-104.

Hunting.

Resident hunting license.

Permanent license, §15-42-104.

Hunting licenses.

Nonresident hunting license.

Reciprocity agreements, §15-42-126.

Resident hunting license.

Permanent license, §15-42-104.

Retirement community program,

§§15-14-101 to 15-14-108.

Application criteria for selection,
§15-14-104.

Community services, §§15-14-104,
15-14-105.

Creation, §15-14-103.

Definitions, §15-14-102.

SENIOR CITIZENS —Cont'd**Retirement community program**

—Cont'd

Eligibility, §15-14-104.

Goals, §15-14-103.

Program fund account, §15-14-107.

Recertification, §15-14-106.

Rulemaking authority, §15-14-108.

Title of act, §15-14-101.

SERVICE OF NOTICE, PROCESS AND OTHER PAPERS.**Mines and minerals.**

Lease of mineral rights.

Life tenants.

Service upon respondents,
§15-56-409.

Trees and timber.

State lands.

Unlawful cutting or removal,
§15-32-304.

Return of officer where no one in
possession, §15-32-305.

Witnesses.

Oil and gas commission, §15-71-112.

SEVERANCE TAX.**Credits.**

Oil and gas.

Promotion of exploration of oil.

Credit against severance tax,
§15-72-706.

Oil and gas.

Promotion of explorations for oil.

Credit against tax, §15-72-706.

SEWAGE SLUDGE.**Poultry feeding operations.**

Registration with natural resources
commission, §§15-20-901 to
15-20-906.

Soil nutrient application and poultry litter utilization.

General provisions, §§15-20-1101 to
15-20-1114.

Soil nutrient management planners and applicators.

Certification, §§15-20-1001 to
15-20-1008.

Surplus nutrient removal incentives,

§§15-20-1201 to 15-20-1206.

SHERIFFS.**Trees and timber.**

State lands.

Unlawful cutting or removal.

Communicating information of
trespass, §15-32-309.

SHORT LINE RAILROADS.

Mines and minerals, §§15-56-501 to
15-56-505.

SIGNATURES.**Bond issues.**

- Amendment 82 bonds.
- Form and delivery of bonds,
§15-4-3211.

Water pollution abatement facilities bonds.

- Form of bond, §15-20-1307.

SLUDGE.**Poultry feeding operations.**

- Registration with natural resources commission, §§15-20-901 to 15-20-906.

Soil nutrient application and poultry litter utilization.

- General provisions, §§15-20-1101 to 15-20-1114.

Soil nutrient management planners and applicators.

- Certification, §§15-20-1001 to 15-20-1008.

Surplus nutrient removal incentives, §§15-20-1201 to 15-20-1206.**SMALL BUSINESSES.****Capital access program, §§15-5-1101 to 15-5-1110.****Definitions.**

- Development finance authority,
§15-5-703.
- Stimulating small business growth,
§15-4-403.

Development finance authority.

- Citation of subchapter, §15-5-701.
- Declaration of public necessity,
§15-5-702.
- Definitions, §15-5-703.
- Duty of authority, §15-5-704.
- Evaluation of small-business persons,
§15-5-706.

Grants.

- Power of authority to make,
§15-5-712.

Guaranty account, §15-5-707.**Investment of funds, §15-5-707.****Legislative findings, §15-5-702.****Loans.**

- Funding or guarantee of loan.
Applications, §15-5-708.
Review, §15-5-709.
Conditions, §15-5-705.
Power of authority to make,
§15-5-712.

Members.

- Liability, §15-5-710.

Qualified investments.

- Funding, §15-5-713.

Short title of subchapter, §15-5-701.**SMALL BUSINESSES —Cont'd****Development finance authority****—Cont'd**

- Small business revolving loan fund,
§15-5-707.

- Grants to fund, §15-5-711.

Staff.

- Liability, §15-5-710.

Economic development incentive, §§15-4-1601 to 15-4-1609.**Funds.**

- Development finance authority.
Qualified investments, §15-5-713.

Grants.

- Development finance authority.
Power of authority to make,
§15-5-712.

Investments.

- Development finance authority,
§15-5-713.

Liens.

- Stimulating small business growth.
Bond issues.
Lien as security, §15-4-411.

Loans.

- Development finance authority.
Funding or guarantee of loan,
§15-5-705.
Application, §15-5-708.
Review, §15-5-709.
Power of authority to make,
§15-5-712.

Loan collaboration program, §§15-4-2501 to 15-4-2506.**Definitions, §15-4-2501.****Duty to seek collaboration, §15-4-2505.****Lender application, approval, §15-4-2503.****Supporting documents, §15-4-2504.****Regulations.****Promulgation of, §15-4-2506.****Subsidy of loan, §15-4-2502.****Rules and regulations.**

- Stimulating small business growth,
§15-4-405.

Stimulating small business growth.**Bond issues.****Amount.****Limitation, §15-4-407.****Authority to issue, §15-4-406.****Deposits, §15-4-416.****Expenses, §15-4-412.****Issuance.****Limits on bond issuance, §15-4-407.****Prerequisites, §15-4-408.**

SMALL BUSINESSES —Cont'd**Stimulating small business growth —Cont'd****Bond issues —Cont'd****Issuance —Cont'd**

Procedures, §15-4-410.

Liability.

No personal liability, §15-4-414.

Loans.

Funds for.

Revenue bonds, §15-4-406.

Procedures applicable, §15-4-410.

Proceeds.

Use, §15-4-415.

Redemption.

Procedures, §15-4-410.

Resolutions.

Authorizing resolution and trust indenture, §15-4-409.

Revenues.

Use, §15-4-416.

Security for bonds, §15-4-411.

Taxation.

Exemption from taxes, §15-4-413.

Trust indentures, §15-4-409.

Use of revenues, §15-4-416.

Citation of subchapter, §15-4-401.

Definitions, §15-4-403.

Legislative findings, §15-4-402.

Liens.

Security for bond issues, §15-4-411.

Loans.**Applications.**Companies qualified for,
§15-4-405.

Limitation, §15-4-407.

Sale, §15-4-405.

Purpose of provisions, §15-4-402.

Rules and regulations.

Promulgation, §15-4-404.

Short title of subchapter, §15-4-401.

Taxation.

Bonds exempt from tax, §15-4-413.

Taxation.

Stimulating small business growth.

Bond issues.

Exemption from taxes, §15-4-413.

SMALL BUSINESS LOAN**COLLABORATION PROGRAM,**

§§15-4-2501 to 15-4-2506.

SOIL CONSERVATION.**Agents.**

State university designated as state's agent, §15-21-402.

Agriculture.

Secretary of agriculture.

Submission of plan, §15-21-404.

SOIL CONSERVATION —Cont'd**Federal act.**

Acceptance, §15-21-401.

Federal aid.

Acceptance, §15-21-405.

Use of funds, §15-21-405.

Land donated for soil conservation purposes.

Acceptance, §15-21-406.

Legislative determination of policy, §15-21-401.**Planning.**

Formulation, §15-21-404.

Submission to secretary of agriculture,
§15-21-404.**University of Arkansas.**

Accounts, §15-21-407.

Board of trustees.

Acceptance of plans donated for soil conservation purposes,
§15-21-406.Designation as state's agent,
§15-21-402.

Legislative determination, §15-21-401.

Powers and duties.

Generally, §15-21-403.

Reports, §15-21-407.

SOIL NUTRIENT APPLICATION AND POULTRY LITTER**UTILIZATION, §§15-20-1101 to 15-20-1114.****Action to collect penalties, §15-20-1113.****Administrative penalties, §15-20-1113.****Applying designated nutrient to soils or crops.**

Requirements, §15-20-1106.

Considerations in developing regulation, §15-20-1105.**Definitions, §15-20-1103.****Enforcement, §15-20-1112.****Findings of general assembly, §15-20-1102.****Implementation, regulations, §15-20-1111.****Legislative intent, §15-20-1102.****Litter utilization committees, §15-20-1110.****Nutrient management plans, §15-20-1107.****Nutrient surplus areas.**

Applying designated nutrient to soils or crops.

Requirements, §15-20-1106.

Areas declared, §15-20-1104.

Defined, §15-20-1103.

Litter utilization committees,
§15-20-1110.

**SOIL NUTRIENT APPLICATION
AND POULTRY LITTER
UTILIZATION —Cont'd**

Nutrient surplus areas —Cont'd

- Nutrient management plans,
§15-20-1107.
- Permit serving as nutrient
management plans, §15-20-1107.
- Poultry litter management plans,
§15-20-1108.
- Sale or transfer of poultry litter within
area, §15-20-1109.

**Poultry litter management plans,
§15-20-1108.**

**Regulations to implement,
development, §15-20-1111.**

**Regulatory considerations,
§15-20-1105.**

**Right to enter private property.
Enforcement, §15-20-1112.**

**Sale or transfer of poultry litter,
§15-20-1109.**

Subpoenas.

- Issuance to enforce provisions,
§15-20-1112.

Title of act, §15-20-1101.

**Water and air pollution control act.
No conflict, §15-20-1114.**

Water development fund.

- Deposit of penalties collected,
§15-20-1113.

**SOIL NUTRIENT MANAGEMENT
PLANNERS AND
APPLICATORS, §§15-20-1001 to
15-20-1008.**

Certification.

- Administrative penalties, §15-20-1008.
- Process for imposing, §15-20-1006.
- Applicators, §15-20-1005.
- Definitions, §15-20-1003.
- Disposition of fees and penalties
collected, §15-20-1007.

Legislative intent, §15-20-1002.

Nutrient planners, §15-20-1004.

Records not public, §15-20-1006.

Regulations.

Process for developing, §15-20-1006.

Subpoenas, issuance by commission,
§15-20-1008.

Title of act, §15-20-1001.

Voluntary.

Applicators, §15-20-1005.

Nutrient planners, §15-20-1004.

Water development fund.

Disposition of fees and penalties
collected, §15-20-1007.

SOIL NUTRIENTS.

**Management planners and
applicators.**

Certification, §§15-20-1001 to
15-20-1008.

Poultry feeding operations.

Registration with natural resources
commission, §§15-20-901 to
15-20-906.

**Soil nutrient application and
poultry litter utilization.**

General provisions, §§15-20-1101 to
15-20-1114.

**Surplus nutrient removal incentives,
§§15-20-1201 to 15-20-1206.**

SOLID WASTE MANAGEMENT.

Facilities.

Bonds to finance.

Water resources bonds generally,
§§15-22-1301 to 15-22-1313.

Construction assistance revolving loan
fund, §§15-5-901 to 15-5-910.

Financing.

Waste and pollution abatement,
§§15-22-701 to 15-22-721.

**Pollution abatement financing,
§§15-22-701 to 15-22-721.**

Steel.

Manufacturers tax incentives.

Post consumer waste.

Good faith effort to use,
§15-4-2405.

Recycling tax credit.

Extension of, §15-4-2405.

Refund of, §15-4-2406.

**SOUTHERN GROWTH POLICIES
AGREEMENT.**

Enactment, §15-2-101.

General provisions, §15-2-101.

Text, §15-2-101.

**SOUTHERN STATES ENERGY
COMPACT, §§15-10-401 to
15-10-404.**

**SPARTA AQUIFER CRITICAL
GROUNDWATER COUNTIES,
§§15-22-1201 to 15-22-1218.**

Audits.

Conservation boards.

Annual financial audit and report,
§15-22-1213.

Citation of act, §15-22-1201.

Conservation boards.

Audits.

Annual financial audit and report,
§15-22-1213.

Hearing on establishment,
§15-22-1207.

SPARTA AQUIFER CRITICAL GROUNDWATER COUNTIES

—Cont'd

Conservation boards —Cont'd

- Investigations, §15-22-1218.
- Meetings, §15-22-1211.
- Members, §§15-22-1208, 15-22-1209.
- Compensation, §15-22-1211.
- Immunity, §15-22-1211.
- Oath of office, §15-22-1210.
- Petitions for nomination of members, §15-22-1209.
- Petition to establish, §15-22-1205.
- Presentation to judge of circuit court, §15-22-1207.
- Proceedings upon filing, §15-22-1206.
- Powers, §15-22-1212.
- Rules and regulations, §15-22-1218.
- Vacancies, §15-22-1210.

Conservation fee.

- Levy, §15-22-1214.
- Payment, §15-22-1215.

Construction and interpretation, §15-22-1204.

Definitions, §15-22-1203.

Fees.

- Conservation fee.
- Levy, §15-22-1214.
- Payment, §15-22-1215.

Immunities.

- Conservation board members, §15-22-1211.

Legislative declaration, §15-22-1202.

Meters.

- Registered water users.
- Requirement of meter, §15-22-1216.
- Tampering with meter.
- Criminal penalties, §15-22-1217.

Natural resources commission.

- Investigations, §15-22-1218.
- Petition to establish conservation board.
- Duties of commission upon receipt of, §15-22-1206.
- Petition to establish conservation board.
- Investigation and report on receipt of, §15-22-1206.
- Rules and regulations, §15-22-1218.

Notice.

- Conservation boards.
- Hearing on establishment, §15-22-1207.

Penalties for violations, §15-22-1217.

Petitions.

- Conservation boards.
- Establishment, §§15-22-1205, 15-22-1206.

SPARTA AQUIFER CRITICAL GROUNDWATER COUNTIES

—Cont'd

Petitions —Cont'd

- Conservation boards —Cont'd
- Nominations for membership, §15-22-1209.

Registered water users.

- Conservation fee, §§15-22-1214, 15-22-1215.
- Defined, §15-22-1203.
- Meter required, §15-22-1216.
- Reports.
- Monthly reports, §§15-22-1215, 15-22-1217.

Reports.

- Conservation boards.
- Annual audit and report, §15-22-1213.
- False reports.
- Criminal penalties, §15-22-1217.
- Monthly report by registered and significant water users, §15-22-1215.
- Penalties for failure to report, §15-22-1217.

Rules and regulations, §15-22-1218.

Significant water users.

- Conservation fee, §15-22-1215.
- Defined, §15-22-1203.
- Reports.
- Monthly reports, §§15-22-1215, 15-22-1217.

Title of act, §15-22-1201.

SPAVINAW CREEK WATERSHED.

Nutrient surplus areas.

- Areas declared, §15-20-1104.

STATE DEPARTMENTS AND AGENCIES.

Energy.

- Energy office.
- Cooperation and coordination with energy office, §15-10-206.

Nuclear power.

- Conduct of studies concerning changes in laws and regulations with a view to atomic industrial development, §15-10-304.
- Coordination of studies and development activities, §15-10-305.

Surface coal mining and reclamation.

- Compliance with provisions, §15-58-105.

STATE LANDS.**Appeals.**

- Trees and timber.
- Unlawful cutting or removal,
§15-32-305.

Game and fish.

- Transfer of state-owned land,
§15-41-109.

STATE OF ARKANSAS.**Game and fish.**

- Property of state, §15-43-104.

**STATE OF ARKANSAS ECONOMIC
DEVELOPMENT GENERAL
OBLIGATION BONDS.****General obligation economic
development superprojects bond
and project funding, §§15-4-3001
to 15-4-3023.****STATE PUBLICITY.****Advertising agencies.**

- Contracts for professional services by.
- Rules and procedures governing,
§15-11-102.

Bonds, surety.

- State parks, recreation and travel
commission.
- Director, §15-11-205.

Contracts.

- Rules and procedures governing.
- Professional services of advertising
agencies, §15-11-102.
- Purchase of printed material and
specialty items for advertising
purposes, §15-11-102.

Definitions.

- Regional tourist promotion agencies,
§15-11-401.

Department of parks and tourism.

- Duties, §15-11-101.

Grants.

- Regional tourist promotion agencies,
§15-11-405.

Purchases and supplies.

- Printed material and specialty items
for advertising purposes.
- Rules and procedures governing
purchase, §15-11-102.

**Regional tourist promotion
agencies.**

- Administration of subchapter,
§15-11-404.
- Apportionment of funds for,
§15-11-407.
- Audits, §15-11-409.
- Brochures and other printed matter.
- Not subject to state printing
contracts, §15-11-410.

STATE PUBLICITY —Cont'd**Regional tourist promotion agencies
—Cont'd**

- Combined planning regions,
§15-11-402.
- Definitions, §15-11-401.
- Designation as.
- Requirements, §15-11-403.
- Revocation of designation,
§15-11-403.
- Federal aid.
- Acceptance, §15-11-407.
- Formation, §15-11-402.
- Grants.
- Generally, §15-11-405.
- Grants from department of parks
and tourism, §15-11-406.
- Investigations.
- Expenditure of funds, §15-11-409.
- Matching state funds.
- Use, §15-11-408.
- Natural planning regions, §15-11-402.
- Defined, §15-11-401.
- Tourism division.
- Administration of subchapter,
§15-11-404.

**State parks, recreation and travel
commission.**

- Appointment, §15-11-202.
- Bond, surety, §15-11-205.
- Commissioners emeritus.
- Designation as, §15-11-203.
- Duties, §15-11-203.
- Compensation, §15-11-202.
- Composition, §15-11-202.
- Creation, §15-11-201.
- Director.
- Employment, §15-11-205.
- News media.
- Cooperation with news media
representatives, §15-11-207.
- Duties, §§15-11-206, 15-11-211.
- Effect of provisions, §15-11-208.
- Law enforcement officers, award of
pistol upon retirement,
§15-11-210.
- Meetings, §15-11-204.
- Oath of office, §15-11-202.
- Officers, §15-11-204.
- Powers, §§15-11-206, 15-11-211.
- Purpose of commission, §15-11-201.
- Qualifications of members, §15-11-202.
- Quorum, §15-11-204.
- Terms of office, §15-11-202.
- Tourist information bureaus.
- Cooperation with other state
agencies with respect to tourist
information bureaus,
§15-11-305.

STATE PUBLICITY —Cont'd**State parks, recreation and travel commission —Cont'd****Tourist information bureaus —Cont'd**

Duties and powers as to tourist information bureaus,
§15-11-303.

Establishment of tourist information bureaus, §15-11-301.

Gifts, grants and donations.
Preferential treatment or consideration in accepting.
Prohibited, §15-11-304.

Vacancies in office.

Filling, §15-11-202.

Tourist information bureaus.

Creation, §15-11-301.

Duties, §15-11-302.

Location, §15-11-302.

State parks, recreation and travel commission.

Cooperation with other state agencies with respect to tourist information bureaus,
§15-11-305.

Duties and powers as to tourist information bureaus,
§15-11-303.

Establishment of tourist information bureaus, §15-11-301.

Gifts, grants and donations.
Preferential treatment or consideration in accepting.
Prohibited, §15-11-304.

Tourist information centers.

Lease of facilities for, §15-11-306.

Authority to lease facilities to municipality, county or non-profit corporation,
§15-11-306.

Purpose, §15-11-306.

STATES.**Fishing.**

Licenses.

Issuance of licenses in states bordering Arkansas,
§15-42-122.

Penalty for violation of provisions,
§15-42-122.

Hunting.

Licenses.

Issuance of licenses in states bordering Arkansas, §15-42-122.

Penalty for violation of provisions,
§15-42-122.

STATUTE OF LIMITATIONS.**Mines and minerals.**

Claims on public lands.

Actions against claimants,
§15-56-204.

STEEL MANUFACTURERS TAX

INCENTIVES, §§15-4-2401 to 15-4-2407.

Apportionment of credit amount, §15-4-2407.

Certification required, §15-4-2402.

Definitions, §15-4-2401.

Exemption from taxes, §15-4-2403.

Net operating loss deductions, §15-4-2404.

Post consumer waste.

Good faith effort to use,
§15-4-2405.

Recycling tax credit.

Extension of, §15-4-2405.

Refund of, §15-4-2406.

STOCK AND STOCKHOLDERS.**Development finance corporations.**

Retirement of preferred stock,
§15-4-919.

Voting and transfer of common stock,
§15-4-915.

STORAGE.**Oil and gas.**

Underground gas storage, §§15-72-601 to 15-72-608.

STRIP MINING.

Surface coal mining and reclamation, §§15-58-101 to 15-58-510.

SUBPOENAS.**Brine production.**

Power of commission,
§15-76-323.

Liquefied petroleum gas.

Board, §15-75-321.

Natural resources commission.

Witnesses, §15-22-208.

Soil nutrient application and poultry litter utilization.

Issuance to enforce provisions,
§15-20-1112.

Soil nutrient management planners and applicators certification, §15-20-1008.

Witnesses.

Natural resources commission,
§15-22-208.

SUBSTANCE ABUSE.**Hunting accidents.**

Implied consent to chemical test,
§15-42-127.

SUMMONS.**Mines and minerals.**

Lease of mineral rights, §15-56-302.
Issuance and service, §15-56-302.

Oil and gas.

Commission.
Production of documents,
§15-71-112.
Failure to produce documents,
§15-71-112.
Witnesses, §15-71-112.
Illegal oil and gas.
Issuance of summons, §15-72-403.
Partition of oil and gas lease interests,
§15-73-403.

**SURFACE MINING AND
RECLAMATION.****Abatement of adverse effects,**
§15-58-404.**Actions.**

Citizens' actions, §15-58-309.

Appeals.

Administrative review.
Costs, §15-58-213.
Judicial review, §15-58-212.
Costs, §15-58-213.

Bonds, surety, §15-58-509.**Citation of act, §15-58-101.****Conflicts of interest.**

Penalties, §15-58-206.
Persons performing function or duty
under act.
Financial interest in surface coal
mining prohibited, §15-58-206.

Corporations.

Compliance with provisions,
§15-58-105.

Costs.

Administrative and judicial review,
§15-58-213.
State abandoned mine reclamation
program projects, §15-58-403.

Declaration of policy, §15-58-103.**Definitions, §15-58-104.****Environmental protection
performance standards.**

Required to be met, §15-58-510.

Environmental quality department.

Defined, §15-58-104.
Director.
Powers and duties, §15-58-203.
Jurisdiction, §15-58-201.

SURFACE MINING AND**RECLAMATION —Cont'd****Environmental quality department
—Cont'd**

Powers and duties, §§15-58-201,
15-58-202.

Exempt activities, §15-58-106.**Exploration operations, §15-58-504.****False pretenses and cheats.**

Misdemeanors, §15-58-306.

Findings of legislature, §15-58-102.**Hearings.**

Adjudicatory hearings.
Applications for review, §15-58-209.
Presiding officers, §15-58-210.
Procedures generally, §15-58-211.
Legislative hearings, §15-58-207.
Examiners, §15-58-208.
Use of acquired lands, §15-58-407.

Imminent danger or harm.

Conditions, practices and violations
creating, §15-58-302.
Cessation order, §15-58-302.
Conditions, practices and violations
not creating, §15-58-301.
Cessation orders, §15-58-301.
Notice of violations, §15-58-301.

Injunctions.

Civil enforcement, §15-58-308.

Inspections, §15-58-205.**Interfering with director or agent,**
§15-58-305.**Judicial review, §15-58-212.****Jurisdiction.**

Department of environmental quality,
§15-58-201.

Legislative declaration of policy,
§15-58-103.**Legislative findings, §15-58-102.****Liens, §15-58-404.****Misrepresentation, §15-58-306.****Notice.**

Imminent danger or harm.
Conditions, practices and violations
not creating, §15-58-301.

Open-cut land reclamation,
§§15-57-310 to 15-57-320.

Duties of operator, §15-57-315.
Exemptions, §15-57-320.
Permits, §15-57-310.

Orders.

Civil enforcement.
Restraining orders, §15-58-308.
Imminent danger or harm.
Conditions, practices and violations
creating.
Cessation order, §15-58-302.

SURFACE MINING AND RECLAMATION —Cont'd

Orders —Cont'd

- Imminent danger or harm —Cont'd
 - Conditions, practices and violations not creating.
 - Cessation order, §15-58-301.
- Pattern violations.
 - Revocation or suspension of permit.
 - Order to show cause, §15-58-303.

Penalties.

- Civil penalties, §15-58-307.
- Conflicts of interest, §15-58-206.

Permits.

- Application, §15-58-502.
- Environmental protection performance standards.
 - Satisfaction prerequisite to issuance of permit, §15-58-510.
- Fees, §15-58-508.
- Misdemeanors.
 - Violating condition of permit or order, §15-58-304.

Objections.

- Filing, §15-58-505.

Open-cut land reclamation, §§15-57-310 to 15-57-320.

Renewal, §15-58-506.

Required, §15-58-502.

Suspension or revocation.

- Pattern of violations.
 - Order to show cause, §15-58-303.
- Termination, §15-58-507.

Policy declaration, §15-58-103.

Pollution control and ecology commission.

- Defined, §15-58-104.
- Powers and duties, §15-58-202.

Priorities.

- State abandoned mine reclamation program priorities, §15-58-402.

Public utilities.

- Compliance with provisions, §15-58-105.

Quarry operation, reclamation and safe closure act, §§15-57-401 to 15-57-414.

Real property.

- Designating land as unsuitable for surface coal mining, §15-58-501.
- Lands eligible under state abandoned land reclamation programs, §15-58-401.
- Use of acquired lands, §15-58-407.
- Public hearing, §15-58-407.

Right of entry, §15-58-405.

Rules and regulations.

- Adoption, §15-58-204.

SURFACE MINING AND RECLAMATION —Cont'd

Rules and regulations —Cont'd

- Promulgation, §15-58-201.
- Requirement, §15-58-503.

Short title, §15-58-101.

State abandoned mine reclamation program.

- Costs of projects, §15-58-403.
- Defined, §15-58-104.
- Lands eligible, §15-58-401.
- Priorities, §15-58-402.

State departments and agencies.

- Compliance with provisions, §15-58-105.

Unsuitable land.

- Designation, §15-58-501.

Violating condition of permit or order, §15-58-304.

Voluntary reclamation of land.

- Exemption, §15-57-202.
- Investigation, §15-57-203.
- Notice of proposed reclamation, §15-57-203.
- Reclamation not to subject land to reclamation laws, §15-57-201.

Waters and watercourses.

- Water rights and replacement, §15-58-107.
- Waters eligible under state abandoned mine reclamation program, §15-58-401.

SURPLUS NUTRIENT REMOVAL INCENTIVES, §§15-20-1201 to 15-20-1206.

Application and approval procedure, §15-20-1205.

Application of transported litter, §15-20-1204.

Cost share, §15-20-1203.

Litter, defined, §15-20-1202.

Nutrient surplus area, defined, §15-20-1202.

Rulemaking authority, §15-20-1205.

Source of program money, §15-20-1206.

Title of act, §15-20-1201.

SURVEYS AND SURVEYORS.

Coordinate system, §§15-21-301 to 15-21-310.

Division of land surveys.

- Advisory board.
 - Adviser to state geologist, §15-21-204.
 - Appointment, §15-21-202.
 - Chairman, §15-21-203.
 - Compensation, §15-21-202.

SURVEYS AND SURVEYORS

—Cont'd

Division of land surveys —Cont'd

Advisory board —Cont'd

Composition, §15-21-202.

Continued, §15-21-204.

Creation, §15-21-202.

Duties, §15-21-204.

Expenses.

Reimbursement, §15-21-202.

Meetings, §15-21-203.

Qualifications of members,

§15-21-202.

Terms of office, §15-21-202.

County surveyors.

Assistance by, §15-21-207.

Cooperation with, §15-21-207.

Creation, §15-21-201.

Employees.

Cooperation with county surveyors,
§15-21-207.

Licensure, §15-21-207.

Right of entry, §15-21-208.

Functions, §15-21-201.

Government land office corners.

Restoration, §15-21-101.

Information.

Exchange of information,
§15-21-209.

Sale of information, §15-21-210.

State surveyor.

Head of division, §15-21-205.

Transfer to director of department of
commerce.Abstracters not prohibited from
preparing legal land
descriptions, §15-21-211.

Legal land descriptions.

Abstracters not prohibited from
preparing, §15-21-211.

Transfer to state geologist.

Abstracters unaffected, §15-21-211.

Advisory board continued,
§15-21-204.

State surveyor.

Appointment by state geologist,
§15-21-205.**Government lands office corners.**

Restoration of original corners.

Contracts between certified land
surveyors and office, §15-21-101.**Right of entry.**State surveyor or employees of
division of land surveys,
§15-21-208.**State surveyor.**

Appointment, §15-21-205.

State geologist, §15-21-205.

SURVEYS AND SURVEYORS

—Cont'd

State surveyor —Cont'dCooperation with county surveyors,
§15-21-207.

Duties, §15-21-206.

Full time position, §15-21-205.

Head of division of land surveys,
§15-21-205.

Powers, §15-21-206.

Qualifications, §15-21-205.

Right of entry, §15-21-208.

Trees and timber.Boundaries ascertained before timber
cut, §15-32-101.Land to be surveyed before timber cut,
§15-32-101.Misdemeanor for violations,
§15-32-101.**T****TAXATION.****Biodiesel incentive act**, §§15-4-2801 to
15-4-2805.**Bond issues.**

Amendment 82 bonds.

Tax-exempt status, §15-4-3216.

Business incentives.Consolidated incentive act of 2003,
§§15-4-2701 to 15-4-2714.**Capital development companies.**Exemption from income tax,
§15-4-1025.

Income tax credits, §15-4-1026.

Development finance corporations.

Bond issues.

Exemption of interest and
obligations from certain taxes,
§15-4-925.**Enterprise zone act**, §§15-4-1701 to
15-4-1705.**Equity investment incentives, tax
credits**, §§15-4-3301 to 15-4-3306.**Industrial development.**

Corporations for promotion.

Bond issues.

Tax exemption, §15-4-524.

County and regional industrial
development companies.

Exemptions, §15-4-1223.

Tax credit, §15-4-1224.

Major industries facilities incentive.

Suspension of local tax, §15-4-1810.

Natural resources commission.Property of commission and interest
on bonds.Exemption from taxation,
§15-22-512.

TAXATION —Cont'd**Small businesses.**

- Stimulating small business growth.
- Bond issues.

Exemption from taxes, §15-4-413.

Steel manufacturers tax incentives,

§§15-4-2401 to 15-4-2407.

Tourism development.

- Income tax credit, §15-11-509.
- Sales tax credit, §15-11-507.

Waste and pollution abatement financing.

Exemptions, §15-22-716.

Water pollution abatement facilities bonds.

- Tax-exempt status from local taxes, §15-20-1312.

Water resources bonds.

Exemptions, §15-22-1303.

Water resources development.

- Bond issues.
- Exemptions from tax, §15-22-617.

TAX EXEMPTIONS.**Economic development**

superprojects bonds, §15-4-3016.

Industrial development.

- County and regional industrial development companies, §15-4-1223.

Industrial development

corporations, §15-4-524.

Petroleum storage tank trust fund bond financing.

Interest on bonds, §15-5-1206.

Steel manufacturers, §15-4-2403.**Water resources bonds, §15-22-1303.****TECHNOLOGY.****Alternative fuels development,**

§§15-13-101 to 15-13-305.

Arkansas research alliance act,

§§15-3-301 to 15-3-306.

Equity investment incentives,

§§15-4-3301 to 15-4-3306.

Risk capital matching fund,

§§15-5-1601 to 15-5-1609.

Tax credits for technology-based enterprises, §15-4-2706.**THEFT.****Timber.**

Timber trust money, §15-32-604.

TIMBER TRUST MONEY, §§15-32-601 to 15-32-605.**Beneficiaries, §15-32-602.****Defenses, §15-32-604.****Definitions, §15-32-601.****Offenses, §15-32-603.****TIMBER TRUST MONEY —Cont'd****Secondary purchasers exempt,**

§15-32-605.

Source of funds, §15-32-602.**Trustees, §15-32-602.****TOURISM.****Development, §§15-11-501 to 15-11-511.**

Approval of companies and projects, §15-11-505.

Construction of provisions, §15-11-508.

Contracts, §15-11-506.

Definitions, §15-11-503.

Evaluation standards, §15-11-504.

Income tax credit, §15-11-509.

Legislative intent, §15-11-502.

Lodging facilities.

Special rules for certain lodging facilities, §15-11-510.

Qualified amusement parks.

Special rules for certain amusement parks, §15-11-511.

Sales tax credit, §15-11-507.

Title, §15-11-501.

Keep Arkansas Beautiful

Commission, §§15-11-601 to 15-11-604.

Regional tourist promotion

agencies, §§15-11-401 to 15-11-410.

State publicity, §§15-11-101 to

15-11-410.

TRAILS.**Wildlife observation trails pilot**

program, §§15-11-701 to 15-11-709.

TREES AND TIMBER.**Accounts and accounting.**

Measuring and marking logs.

Monthly accounts of deputies, §15-32-403.

Actions.

County timber inspectors.

Actions on bonds, §15-32-204.

Purchases based upon volume or weight.

Payments of less than correct amount.

Actions to recover correct amount, §15-32-413.

Wages for piece work.

Recovery of wages owed, §15-32-413.

Attachment.

State lands.

Unlawful cutting or removal.

Attachment against property of violator, §15-32-301.

Issuance of attachment, §15-32-302.

TREES AND TIMBER —Cont'd**Bonds, surety.**

County timber inspectors, §15-32-203.

Actions on bonds, §15-32-204.

Bonds filed in recorder's office,
§15-32-204.

Complaints.

State lands.

Unlawful cutting or removal,
§15-32-303.

Verification of complaint,
§15-32-304.

Co-owners and co-heirs.

Sales, §15-32-501.

County surveyors.

County timber inspectors.

County surveyors ex officio county
timber inspectors, §15-32-201.

County timber inspectors.

Actions on bonds, §15-32-204.

Bonds, surety, §15-32-203.

Actions on bonds, §15-32-204.

Filed in recorder's office, §15-32-204.

County surveyors to discharge duties,
§15-32-201.

Deputies, §15-32-206.

Inspector responsible for acts,
§15-32-206.

Discharge of duties by county
surveyor, §15-32-201.

Oaths, §15-32-202.

Filed in recorder's office, §15-32-204.

Penalties.

Purchasing public lands, §15-32-205.

Prohibited from purchasing public
lands, §15-32-205.

Penalties, §15-32-205.

Reports.

State lands.

Unlawful cutting or removal.

Quarterly reports and payment
of funds by inspector,
§15-32-207.

State lands.

Unlawful cutting or removal.

Quarterly reports and payment of
funds by inspector,
§15-32-207.

Evidence.

State lands.

Unlawful cutting or removal.

Certificate by secretary of state of
land ownership.

Presumptive evidence,
§15-32-310.

Fees.

Measuring and marking logs.

County timber inspectors,
§15-32-410.

TREES AND TIMBER —Cont'd**Fees —Cont'd**

Purchases based upon volume or
weight.

Actions to recover difference in
purchase price.

Attorneys' fees, §15-32-413.

Wages for piece work.

Actions to recover owed wages.

Attorneys' fees, §15-32-413.

Liens.

Measuring and marking logs.

Prize logs.

Lien for driving when
intermingled with marked
logs, §15-32-408.

Marking logs.

Measuring and marking logs,
§§15-32-401 to 15-32-413.

Measuring and marking logs.

Accounts and accounting.

Monthly accounts of deputies,
§15-32-403.

Certified bill of measurement by
inspector, §15-32-401.

County timber inspectors.

Certified bill of measurement,
§15-32-401.

Deputies.

Monthly accounts, §15-32-403.

Rules and regulations governing,
§15-32-208.

Fees, §15-32-410.

Reports to legislature, §15-32-404.

Fees.

County timber inspectors,
§15-32-410.

Liens.

Prize logs.

Lien for driving when
intermingled with marked
logs, §15-32-408.

Marking rafted logs, §15-32-409.

Penalty for failure to mark,
§15-32-409.

Method of scaling logs, §15-32-402.

Monthly accounts of deputies,
§15-32-403.

Mortgages and deeds of trust.

Recordation of marked log
mortgages, §15-32-407.

Penalties.

Failure to mark rafted logs,
§15-32-409.

Unlawfully marking logs,
§15-32-406.

Prize logs.

Lien for driving when intermingled
with marked logs, §15-32-408.

TREES AND TIMBER —Cont'd**Measuring and marking logs —Cont'd**

Recordation, §15-32-405.

Marks, §15-32-405.

Mortgages and sales of marked logs,
§15-32-407.

Sales of marked logs, §15-32-407.

Reports.

County timber inspectors.

Reports to legislature, §15-32-404.

Rules and regulations.

Governing duties of deputies,
§15-32-208.

Sales of marked logs.

Recordation, §15-32-407.

Scaling logs.

Method, §15-32-402.

Unlawfully marking logs.

Penalties, §15-32-406.

Mortgages and deeds of trust.

Measuring and marking logs.

Mortgages of marked logs to be
recorded, §15-32-407.

Notice.

State lands.

Unlawful cutting or removal.

Seizure of logs unlawfully cut,
§15-32-303.

Oaths.

County timber inspectors, §15-32-202.

Oath filed in recorder's office,
§15-32-204.

Orders.

State lands.

Unlawful cutting or removal.

Warning orders, §15-32-305.

Penalties.

County timber inspectors.

Purchasing public lands, §15-32-205.

Measuring and marking logs.

Failure to mark rafted logs,
§15-32-409.

Unlawfully marking logs,
§15-32-406.

Prosecuting attorney.

State lands.

Unlawful cutting or removal.

Criminal prosecutions, §15-32-307.

Purchases.

Based upon volume or weight,
§15-32-412.

Computation of price, §15-32-412.

Payment of less than correct
amount, §15-32-412.

Actions to recover amount owed,
§15-32-413.

Liability of purchaser, §15-32-412.

TREES AND TIMBER —Cont'd**Purchases —Cont'd**

Co-owners and co-heirs.

Unknown or unlocatable co-owners
or co-heirs, §15-32-501.

Recordation.

Measuring and marking logs.

Mortgages and sales of marked logs
to be recorded, §15-32-407.

Recording of marks, §15-32-405.

Reports.

County timber inspectors.

State lands.

Unlawful cutting or removal.

Quarterly reports and payment
of funds by inspector,
§15-32-207.

Measuring and marking logs.

County timber inspector's reports to
legislature, §15-32-404.

State lands.

Unlawful cutting or removal.

Quarterly reports by county
timber inspectors, §15-32-207.

Rules and regulations.

Measuring and marking logs.

Governing duties of deputies,
§15-32-208.

Sales.

Co-owners and co-heirs, §15-32-501.

Measuring and marking logs.

Sales of marked logs to be recorded,
§15-32-407.

State lands.

Unlawful cutting or removal.

Disposition of logs under
judgment.

Payment of funds into treasury,
§15-32-311.

Unknown or unlocatable co-owners or
co-heirs, §15-32-501.

Secretary of state.

State lands.

Unlawful cutting or removal.

Certificate by secretary of land
ownership.

Presumptive evidence,
§15-32-310.

Sheriffs.

State lands.

Unlawful cutting or removal.

Communicating information of
trespass, §15-32-309.

State lands.

Appeals.

Unlawful cutting or removal,
§15-32-305.

TREES AND TIMBER —Cont'd**State lands —Cont'd**

Attachment.

Unlawful cutting or removal.

Attachment against property of violator, §15-32-301.

Issuance of attachment, §15-32-302.

Complaints.

Unlawful cutting or removal, §15-32-303.

Verification of complaint, §15-32-304.

County timber inspectors.

Unlawful cutting or removal.

Quarterly reports and payment of funds by inspector, §15-32-207.

Evidence.

Unlawful cutting or removal.

Certificate by secretary of state of land ownership.

Presumptive evidence, §15-32-310.

Judgments.

Unlawful cutting or removal.

Disposition of logs under judgment, §15-32-306.

Notice.

Unlawful cutting or removal.

Seizure of logs unlawfully cut, §15-32-303.

Prosecuting attorneys.

Unlawful cutting or removal.

Acting on behalf of state, §15-32-307.

Criminal prosecutions, §15-32-307.

Reports.

Unlawful cutting or removal.

Quarterly reports by county timber inspectors, §15-32-207.

Sales.

Unlawful cutting or removal.

Disposition of logs under judgment, §15-32-306.

Payment of funds into treasury, §15-32-311.

Proceeds of sale, §15-32-308.

Secretary of state.

Unlawful cutting or removal.

Certificate by secretary of land ownership.

Presumptive evidence, §15-32-310.

Sheriffs.

Unlawful cutting and removal.

Communicating information of trespass, §15-32-309.

TREES AND TIMBER —Cont'd**State lands —Cont'd**

Summons and process.

Unlawful cutting or removal, §15-32-304.

Return of officer where no one in possession, §15-32-305.

Unlawful cutting or removal, §15-32-301.

Appeals, §15-32-305.

Attachment.

Against property of violators, §15-32-301.

Grounds, §15-32-302.

Issuance, §15-32-302.

Procedure, §15-32-302.

Complaints.

Filings, §15-32-303.

Verification, §15-32-304.

Criminal prosecutions.

By prosecuting attorneys, §15-32-307.

Evidence.

Secretary of state.

Certificate of land ownership presumptive evidence, §15-32-310.

Funds.

Payment of funds into treasury, §15-32-311.

By inspectors, §15-32-207.

Judgments.

Disposition of logs under judgment, §15-32-306.

Liability, §15-32-301.

Notice.

Seizure of logs unlawfully cut, §15-32-303.

Officials communicating information of trespass, §15-32-309.

Orders.

Warning order, §15-32-305.

Payment of funds into treasury, §15-32-311.

Prosecuting attorneys.

Acting on behalf of state, §15-32-307.

Criminal prosecutions, §15-32-307.

Reports.

Quarterly reports, §15-32-207.

Sales.

Disposition of logs under judgment, §15-32-306.

Distribution of proceeds, §15-32-308.

Payment of funds into treasury, §15-32-311.

Proceeds of sale, §15-32-308.

TREES AND TIMBER —Cont'd**State lands —Cont'd**

Unlawful cutting or removal —Cont'd
Secretary of state.

Certificate of land ownership.
Presumptive evidence,
§15-32-310.

Seizure of logs unlawfully cut,
§15-32-303.

Notice, §15-32-303.

Sheriffs.

Communicating information of
trespass, §15-32-309.

Summons and process, §15-32-304.

Return of officer where no one in
possession, §15-32-305.

Warning orders, §15-32-305.

Summons and process.

State lands.

Unlawful cutting or removal,
§15-32-304.

Return of officer where no one in
possession, §15-32-305.

Surveys and surveyors.

Boundaries ascertained before timber
cut, §15-32-101.

Land to be surveyed before timber cut,
§15-32-101.

Misdemeanor for violation,
§15-32-101.

Timber trust money, §§15-32-601 to
15-32-605.

Unlawful cutting or removal,
§15-32-301.

Private lands, §15-32-301.

State lands, §§15-32-301 to 15-32-311.

Wages for piece work.

Basis for volume or weight.

Computation of wages, §15-32-411.

Computation of wages.

Basis of volume or weight,
§15-32-411.

Employers.

Payment of wages less than amount
earned.

Liability of employer, §15-32-411.

Payment of amount less than wages
earned, §15-32-411.

Actions to recover owed wages,
§15-32-413.

Attorney's fees, §15-32-413.

Attorney's fees.

Actions to recover owed wages,
§15-32-413.

Liability of employer, §15-32-411.

Weights and measures.

Measuring and marking logs,
§§15-32-401 to 15-32-413.

TRIAL.**Oil and gas.**

Partition of oil and gas lease interests.

Retrial on motion of defendant
constructively summoned,
§15-73-409.

TRUST FUNDS.

Housing trust fund act of 2009,
§§15-5-1701 to 15-5-1709.

**Petroleum storage tank trust fund
bond financing**, §§15-5-1201 to
15-5-1210.

TRUSTS AND TRUSTEES.**Bonds, surety.**

Lease of oil, gas and mineral interests.

Life estates.

Trustee for remaindermen,
§§15-73-304, 15-73-306.

Oil and gas.

Lease of oil, gas and mineral interests.

Life estates, §§15-73-304, 15-73-306.

**Remainders, reversions and
executory interests.**

Lease of oil, gas and mineral interests.

Life estates, §§15-73-304, 15-73-306.

Timber trust money, §§15-32-601 to
15-32-605.

**Water pollution abatement facilities
bonds.**

Trust indentures, §15-20-1306.

U**UNFAIR AND DECEPTIVE TRADE
PRACTICES.****Oil and gas.**

Price discrimination in purchasing
crude oil, §15-74-501.

UNITED STATES.**Claims.**

Mines and minerals.

Claims on public lands, §§15-56-201
to 15-56-205.

Flood control.

Cooperation with United States,
§15-24-105.

Mines and minerals.

Claims on public lands, §§15-56-201 to
15-56-205.

Natural resources commission.

Water development projects.

Cooperation with state or federal
agencies, §15-22-506.

Contracts in cooperation with
federal government
unimpaired, §15-22-502.

UNITED STATES —Cont'd**Nuclear power.**

- Licenses or permits from United States required, §15-10-303.
- Injunctions, §15-10-306.

Rivers.

- Natural and scenic rivers system.
- Proposed contracts and compacts with federal government.
- Approval of general assembly required, §15-23-310.

UNIVERSITY OF ARKANSAS.

Arkansas seismological observatory,
§§15-21-601 to 15-21-603.

Seismological observatory,
§§15-21-601 to 15-21-603.

Soil conservation and domestic allotment.

- Accounts, §15-21-407.
- Board of trustees.
- Acceptance of plans donated for soil conservation purposes,
§15-21-406.
- Designation as state's agent,
§15-21-402.
- Powers and duties.
- Generally, §15-21-403.
- Reports, §15-21-407.

UNIVERSITY OF ARKANSAS AT LITTLE ROCK.

Arkansas seismological observatory,
§§15-21-601 to 15-21-603.

URINALYSIS.**Hunting accidents.**

- Implied consent to breath analysis,
§15-42-127.

V**VANDALISM.**

Caves, §15-20-603.

Liquefied petroleum gas.

- Containers bearing owner's identification.
- Defacing or obliterating marks unlawful, §15-75-406.

VENTURE CAPITAL INVESTMENT,
§§15-5-1401 to 15-5-1409.

Annual report, §15-5-1408.

Arkansas development finance authority.

- Powers of, §15-5-1409.

Definitions, §15-5-1403.

Designated investor group,
§15-5-1404.

Guaranty, §15-5-1405.

VENTURE CAPITAL INVESTMENT —Cont'd

Purpose, §15-5-1402.

Tax credits, §15-5-1406.

- Registration of, §15-5-1407.

Title, §15-5-1401.

VENUE.**Oil and gas.**

- Prosecution of violations, §15-72-103.

VIDEO GAMES.

Digital product and motion picture industry development,
§§15-4-2001 to 15-4-2011.

W**WAGES.****Trees and timber.**

- Wages for piece work, §§15-32-411 to 15-32-413.

WAIVER.**Oil and gas.**

- Royalties.
- Time for payment, §15-74-707.

WARDENS.**Game wardens.**

- Authorized searches, §15-41-203.

WARNING ORDERS.**Constructive service.**

- Logging.
- Unlawful cutting or removal.
- Complaint and notice when no one in possession, §15-32-305.
- Oil and gas.
- Illegal oil and gas.
- Notice of proceedings,
§§15-72-403, 15-72-404.
- Partition, §15-73-403.

WASTE.**Oil and gas.**

- Prohibited, §15-72-105.

Pollution abatement financing,
§§15-22-701 to 15-22-721.

WASTE AND POLLUTION ABATEMENT FINANCING,
§§15-22-701 to 15-22-721.

Application of bond proceeds,
§15-22-708.

Authorization of bond issues,
§15-22-711.

Bond issues, §15-22-705.

- Approval of governor, §15-22-707.

Authorization, §15-22-711.

Deposit of proceeds of sale, §15-22-719.

WASTE AND POLLUTION ABATEMENT FINANCING

—Cont'd

Bond issues —Cont'd

Execution and delivery, §15-22-712.

Form, §15-22-709.

General obligations of state,
§15-22-714.

Individual series, §15-22-710.

Principal amount, §15-22-706.

Purpose of issuance, §15-22-708.

Remedies of bondholder, §15-22-717.

Sale after notice, §15-22-713.

Citation of act, §15-22-701.

Construction and interpretation, §15-22-703.

Contract not to be impaired, §15-22-717.

Creation of rights, §15-22-718.

Definitions, §15-22-702.

Execution and delivery of bonds, §15-22-712.

Expedition of cases, §15-22-721.

Form of bonds, §15-22-709.

Funds.

Transfer and use, §15-22-715.

Governor's approval of bond issues, §15-22-707.

Interpretation of provisions, §15-22-703.

Investment of money, §15-22-720.

Investments, §15-22-716.

Money held under act provisions. Investment, §15-22-720.

Natural resources commission.

Issuance of bonds, §15-22-705.

Powers and duties, §15-22-704.

Notice of sale of bonds, §15-22-713.

Payment of debt service, §15-22-715.

Powers of commission, §15-22-704.

Principal amount of bonds, §15-22-706.

Rights created under provisions, §15-22-718.

Sale of bonds.

Deposit of proceeds, §15-22-719.

Series of bonds, §15-22-710.

State obligations.

Bond issues, §15-22-714.

Tax exemption, §15-22-716.

Title of act, §15-22-701.

Validity of provisions.

Expedition of cases, §15-22-721.

WASTE MANAGEMENT.

Poultry feeding operations.

Registration with natural resources
commission, §§15-20-901 to
15-20-906.

WASTE MANAGEMENT —Cont'd

Soil nutrient application and poultry litter utilization.

General provisions, §§15-20-1101 to
15-20-1114.

Soil nutrient management planners and applicators.

Certification, §§15-20-1001 to
15-20-1008.

Surplus nutrient removal incentives, §§15-20-1201 to 15-20-1206.

WASTEWATER MANAGEMENT.

Bond issues.

Water resources bonds.

Generally, §§15-22-1301 to
15-22-1313.

Construction assistance revolving loan fund, §§15-5-901 to 15-5-910.

Pollution abatement financing, §§15-22-701 to 15-22-721.

WATERCOURSES.

Arkansas port priority improvement program, §§15-23-901 to 15-23-906.

Arkansas river basin compact, §15-23-401.

Arkansas waterways commission, §§15-23-201 to 15-23-204.

Cache river.

Navigability.

Declaration as nonnavigable,
§15-23-101.

Conservation.

Natural resources commission,
§§15-22-201 to 15-22-223.

Fishing.

Enclosed lake or pond.

Taking fish without consent of
owner, §15-43-329.

Warnings required, §15-43-329.

Lowering stage of water prohibited,
§15-44-111.

Screening intake pipes required,
§15-44-111.

Obstructing stream.

Penalty for obstructing stream,
§15-44-110.

Groundwater protection.

General provisions, §§15-22-901 to
15-22-915.

Sparta aquifer critical groundwater
counties, §§15-22-1201 to
15-22-1218.

Kings river.

Pollution, §15-23-104.

Lee creek.

Development, §15-23-103.

WATERCOURSES —Cont'd

Natural and scenic rivers system,
§§15-23-301 to 15-23-315.

Natural resources commission,
§§15-22-201 to 15-22-223.

Ouachita river commission,
§§15-23-801 to 15-23-806.

**Point Remove Creek development
authorization act,** §15-23-106.

Red River compact, §§15-23-501 to
15-23-503.

**Sparta aquifer critical groundwater
counties,** §§15-22-1201 to
15-22-1218.

**Surface coal mining and
reclamation.**

Water rights and replacement,
§15-58-107.

Waters eligible under state abandoned
mine reclamation program,
§15-58-401.

WATER DEVELOPMENT FUND,
§§15-22-507, 15-22-514.

WATER POLLUTION.

Abatement facilities bonds,
§§15-20-1301 to 15-20-1323.

Poultry feeding operations.

Litter management.

Registration with natural resources
commission, §§15-20-901 to
15-20-906.

**Soil nutrient application and
poultry litter utilization.**

General provisions, §§15-20-1101 to
15-20-1114.

**Soil nutrient management planners
and applicators.**

Certification, §§15-20-1001 to
15-20-1008.

Surplus nutrient removal incentives,
§§15-20-1201 to 15-20-1206.

**Water, waste disposal, and pollution
abatement facilities financing
act of 2007,** §§15-20-1301 to
15-20-1323.

**WATER POLLUTION ABATEMENT
FACILITIES BONDS,**

§§15-20-1301 to 15-20-1323.

Actions.

Cases involving bonds.

Preferred cause, §15-20-1322.

Citation of title, §15-20-1301.

Construction of act.

Liberal construction, §15-20-1323.

No waiver of previous authority to
issue bonds, §15-20-1320.

**WATER POLLUTION ABATEMENT
FACILITIES BONDS —Cont'd****Construction of act —Cont'd**

Severability, §15-20-1321.

Title of act, §15-20-1301.

Contracts.

No impairment of bond obligations,
§15-20-1315.

Criteria for issuance, §15-20-1303.

Debt service.

Payment of debt service on the bonds,
§15-20-1311.

Definitions, §15-20-1302.

Denomination of bonds, §15-20-1304.

Elections.

Effect of election, §15-20-1319.

Special election for issuance,
§15-20-1318.

Form of bond, §15-20-1304.

Signatures, §15-20-1307.

Terms and characteristics,
§15-20-1304.

Full faith and credit, §15-20-1310.

Interest payable, §15-20-1304.

**Mandatory sinking fund
redemption.**

Bonds subject, §15-20-1304.

Natural resources commission.

Additional powers, §15-20-1314.

Authority to issue bonds, §15-20-1303.

Negotiable instruments.

Characteristics of bonds, §15-20-1304.

Proceeds of bonds, §15-20-1309.

Professional personnel.

Authority to hire for sale of bonds,
§15-20-1308.

Purpose of bonds., §15-20-1305.

Refunding bonds.

Issuance, §15-20-1313.

Resolutions and trust indentures.

Authorization and effect, §15-20-1306.

Refunding bonds, §15-20-1313.

Sale of bonds, §15-20-1308.

Securities.

Characteristics of bonds, §15-20-1304.

Series amounts, §15-20-1304.

Severability of act, §15-20-1321.

Signatures.

Form of bond, §15-20-1307.

Special election.

Prerequisite for issuance, §15-20-1318.

State pledged to repay bonds.

Full faith and credit, §15-20-1310.

No impairment of outstanding bonds,
§15-20-1317.

No obligations until bonds issued,
§15-20-1316.

WATER POLLUTION ABATEMENT FACILITIES BONDS —Cont'd

Tax-exempt status.

Bonds exempt from local taxes,
§15-20-1312.

Terms of bonds, §15-20-1304.

Title of act, §15-20-1301.

Trust indentures, §15-20-1306.

WATER RESOURCES CONSERVATION.

Wetlands mitigation bank,
§§15-22-1001 to 15-22-1012.

WATER RESOURCES DEVELOPMENT.

Actions.

Challenging validity of act.

Expediting actions challenging,
§15-22-622.

Authority of commission, §15-22-604.

Bond issues.

Amount, §15-22-605.

Principal amount, §15-22-606.

Approval of governor, §§15-22-607,
15-22-1304.

Authority to issue, §§15-22-605,
15-22-1301.

Contract between state and
bondholders.

No impairment, §15-22-614.

Creation of rights, §15-22-619.

Debt service, §§15-22-602, 15-22-616.

Execution, §§15-22-612, 15-22-1307.

Form, terms, §§15-22-609, 15-22-1305.

General obligations of state,
§15-22-615.

General revenue turnback,
withholding, §15-22-1313.

Immunity of commission members or
officers, §15-22-1312.

Interest, §15-22-610.

Investments.

Legal investment, §15-22-617.

Issuance generally, §§15-22-610,
15-22-1308.

Legal counsel, engaging, §15-22-1302.

Lien of pledge, §15-22-1309.

Maturity, §15-22-610.

Negotiability, §15-22-610.

Notice, §15-22-613.

Payment, §15-22-1308.

Pledge of revenues, §§15-22-615,
15-22-1309.

Price, §15-22-1306.

Proceeds.

Application, §15-22-608.

Deposit, §15-22-620.

WATER RESOURCES

DEVELOPMENT —Cont'd

Bond issues —Cont'd

Projects.

Selection of projects, §15-22-611.

Purpose, §15-22-608.

Refunding bonds, §15-22-1310.

Request for approval, §15-22-1304.

Resolution authorizing, §§15-22-611,
15-22-1305.

Revenues of bondholders, §15-22-618.

Rights created by acts, §15-22-619.

Sale, §§15-22-613, 15-22-1306.

Refunding bonds, §15-22-1310.

Seal, §15-22-1307.

Security for deposit of public funds,
§15-22-1311.

Signature, §§15-22-612, 15-22-1307.

Statements in bonds, §15-22-1308.

Tax exemptions, §§15-22-617,
15-22-1303.

Trust indenture to secure, §§15-22-611,
15-22-1305.

Underwriter, engaging, §15-22-1302.

Uses of funds, §15-22-1301.

Withholding general revenue
turnback, §15-22-1313.

Citation, §15-22-601.

Commission.

Defined, §15-22-602.

Construction and interpretation.

Liberal construction, §15-22-603.

Severability of provisions, §15-22-622.

Subchapter as exclusive authority,
§15-22-603.

Supplemental nature of provisions,
§15-22-603.

Cost share financing.

Citation of subchapter, §15-22-801.

Definitions, §15-22-803.

Funds.

Arkansas water resources cost share
revolving fund, §15-22-808.

Loans or grants.

Amounts.

Limitations, §15-22-805.

Applications, §15-22-806.

Authorized, §15-22-805.

Awards, §15-22-806.

Eligibility, §15-22-806.

Priority list of projects, §15-22-807.

Revolving fund.

Use of funds, §15-22-809.

Natural resources commission.

Duties, §15-22-804.

Priorities.

Projects, §15-22-807.

Purpose of subchapter, §15-22-802.

WATER RESOURCES**DEVELOPMENT** —Cont'd**Cost share financing** —Cont'd

Short title of subchapter, §15-22-801.

Debt service.

Defined, §15-22-602.

Payment, §15-22-616.

Transfer and use of funds, §15-22-616.

Definitions, §15-22-602.

Cost share financing, §15-22-803.

Deposit of funds.

Bond issues.

Proceeds, §15-22-620.

Development.

Defined, §15-22-602.

Exception to federal cooperation requirement, §15-22-810.**Federal cooperation.**

Exception to requirement, §15-22-810.

Governor.

Bond issues.

Approval of governor, §15-22-607.

Interest.

Bond issues, §15-22-610.

Investments.

Bond issues.

Legal investment, §15-22-617.

Funds created under subchapter,
§15-22-621.

Generally, §15-22-621.

Liberal construction of subchapter, §15-22-603.**Natural resources commission.**

Exception to federal cooperation
requirement, §15-22-810.

Negotiable instruments.

Bond issues, §15-22-610.

Notice.

Bond issues, §15-22-613.

Persons.

Defined, §15-22-602.

Powers of commission, §15-22-604.**Project costs.**

Defined, §15-22-602.

Projects.

Defined, §15-22-602.

Deposit of revenues, §15-22-614.

Trust funds created, §15-22-614.

Remedies.

Bond issues.

Bondholders' remedies, §15-22-618.

Reservoirs.

Defined, §15-22-602.

Sales.

Bond issues, §15-22-613.

Severability of provisions, §15-22-622.**WATER RESOURCES****DEVELOPMENT** —Cont'd**Subchapter as exclusive authority,** §15-22-603.**Supplemental nature of provisions,** §15-22-603.**Taxation.**

Bond issues.

Exemptions from tax, §15-22-617.

Title of law, §15-22-601.**Waters.**

Defined, §15-22-602.

WATERSHEDS.**Nutrient surplus areas.**

Soil nutrient application and poultry
litter utilization.

Regulation, §§15-20-1101 to
15-20-1114.

Surplus nutrient removal incentives,
§§15-20-1201 to 15-20-1206.

**WATER SUPPLY AND
WATERWORKS.****Artesian wells,** §§15-22-401 to
15-22-408.**Bond issues.**

Water resources bonds.

Generally, §§15-22-1301 to
15-22-1313.

**Construction assistance revolving
loan fund,** §§15-5-901 to 15-5-910.**Natural resources commission,** §§15-22-201 to 15-22-223.**Oil and gas.**

Willful violation of safe drinking water
act.

Misdemeanors, §15-72-104.

Records.

Willful violation of safe drinking water
act, §15-72-104.

Safe drinking water fund, §§15-22-1101 to 15-22-1112.**Sparta aquifer critical groundwater
counties,** §§15-22-1201 to
15-22-1218.**WATER, WASTE DISPOSAL, AND
POLLUTION ABATEMENT
FACILITIES FINANCING ACT
OF 2007,** §§15-20-1301 to
15-20-1323.**WATER WELLS.****Artesian wells,** §§15-22-401 to
15-22-408.**WEIGHTS AND MEASURES.****Oil and gas.**

General provisions, §§15-74-201 to
15-74-305.

WEIGHTS AND MEASURES —Cont'd**Oil and gas —Cont'd**

Standard gas measurement law,
§§15-74-301 to 15-74-305.

Trees and timber.

Measuring and marking logs,
§§15-32-401 to 15-32-413.

WELLS.

Artesian wells, §§15-22-401 to
15-22-408.

Brine production.

Abandoned wells, §15-76-319.
Drilling permits, §15-76-318.
Fees, §15-76-318.

WETLANDS.**Conservation and management.**

Bonds to finance.
Water resources bonds generally,
§§15-22-1301 to 15-22-1313.
Construction assistance revolving loan
fund, §§15-5-901 to 15-5-910.

Mitigation bank act, §§15-22-1001 to
15-22-1012.

Acquisition and protection,
§15-22-1004.

Agencies.

Use of bank, §15-22-1009.

Annual evaluation, §15-22-1006.

Condemnation.

Prohibited, §15-22-1005.

Consultation and cooperation with
other agencies, §15-22-1009.

Credits.

Resource values and credits.

Use and withdrawal, §15-22-1006.

Definitions, §15-22-1003.

Funds.

Deposits in wetlands mitigation
banks, §15-22-1010.

Sources, §15-22-1011.

Use, §15-22-1012.

Water development fund,
§15-22-1010.

Goals, §15-22-1002.

Mitigation banks.

Funds.

Deposits, §15-22-1010.

Monitoring of activities,
§15-22-1007.

Program, §15-22-1005.

Resource values and credits,
§15-22-1006.

Use by public agencies, §15-22-1009.

Monitoring.

Mitigation banks, §15-22-1007.

Natural resources commission.

Powers of director, §15-22-1004.

WETLANDS —Cont'd**Mitigation bank act —Cont'd**

Plans.

Mitigation banks, §15-22-1005.

Policy statement, §15-22-1002.

Program criteria, §15-22-1005.

Protection, §15-22-1004.

Receipts.

Deposits, §15-22-1010.

Reports, §15-22-1007.

Rules, §15-22-1008.

Short title, §15-22-1001.

Sources of funds, §15-22-1011.

Technical advisory committee.

Consultation and cooperation with
director, §15-22-1009.

Defined, §15-22-1003.

Use of funds, §15-22-1012.

Water development fund.

Receipt of deposits, §15-22-1010.

WHITE RIVER WATERSHED.**Nutrient surplus areas.**

Upper watershed.

Areas declared, §15-20-1104.

WILDFIRES.**Fire control or fire rescue
equipment.**

Donation to forestry commission,
§15-31-116.

**South Central interstate forest fire
protection compact,** §§15-33-101
to 15-33-103.

WILDLIFE.

**Catfish industry development
program,** §15-5-805.

Cold storage plants or facilities.

Storage regulations, §15-44-108.

Conservation.

Wildlife habitat conservation on
private lands.

Licensing agreements, §15-45-101.

Crops.

Wildlife causing crop damage,
§15-44-114.

Game and fish commission.

Director.

Reimbursement of expenses,
§15-41-102.

Special allowance, §15-41-102.

Dogs running at large.

Penalty for enforcement of
regulation, §15-41-113.

Employees.

Uniformed employees.

Allowance for uniform, §15-41-114.

WILDLIFE —Cont'd**Game and fish commission —Cont'd**

Environmental impact statement.

Required before cutting timber on lands belonging to commission, §15-41-108.

Actions for enjoyment of timber cutting until statement filed, §15-41-108.

Expenses of director.

Reimbursement to director, §15-41-102.

Federal aid.

Hunter training and safety program.

Funds for program, §15-43-238.

Fishing licenses.

Use of fees collected, §15-41-111.

Funds.

Game protection fund, §15-41-110.

Game wardens.

Authorized searches, §15-41-203.

Hunter training and safety program, §15-43-238.

Hunting licenses.

Use of fee collected, §15-41-111.

Migratory waterfowl.

Commission to emphasize programs for, §15-41-105.

Rewards, §15-41-115.

Rules and regulations.

Hunter training and safety program.

Adoption and enforcement, §15-43-238.

State lands.

Transfer of state-owned land, §15-41-109.

Timber cut on lands belonging to commission.

Environmental impact statements required, §15-41-108.

Transfer of state-owned land, §15-41-109.

Uniformed employees.

Allowance for uniforms, §15-41-114.

Wild fowl sanctuary.

Authority of game and fish commission, §15-45-210.

Wildlife habitat conservation on private lands.

Licensing agreements, §15-45-101.

Wildlife observation trails pilot program, §§15-11-701 to 15-11-709.

Game protection fund.

Fines to fund, §15-41-209.

Interest, §15-41-110.

WILDLIFE —Cont'd**Habitat.**

Wildlife habitat conservation on private lands.

Licensing agreements, §15-45-101.

Highways.

Deer hunting camps.

Establishment on highways prohibited, §15-43-206.

Penalty for establishment, §15-43-206.

Licenses.

Wildlife habitat on private lands.

Licensing agreements, §15-45-101.

Migratory waterfowl.

Programs for, §15-41-105.

Nongame preservation, §§15-45-301 to 15-45-306.

Recreation facilities pilot program,

§§15-47-101 to 15-47-105.

Creation, §15-47-103.

Funding, §15-47-104.

Legislative findings, §15-47-102.

Purpose, §15-47-103.

Reporting of status, §15-47-105.

Title of provisions, §15-47-101.

Refuges.

Bird sanctuaries.

State parks as bird sanctuaries, §15-45-211.

Collection for scientific study, §15-45-210.

County appraisal board.

Damages to crops, §15-45-209.

Duty to determine damage done by wildlife, §15-45-209.

Damages to crops, §15-45-209.

Molesting birds in state park unlawful, §15-45-211.

Scientific study.

Collection for scientific study, §15-45-210.

Shooting or molesting birds in state park unlawful, §15-45-211.

State game refuges.

Shooting or molesting birds in state park unlawful, §15-45-211.

Wild fowl sanctuary, §15-45-210.

Reports.

Game and fish fines, §15-41-209.

Rules and regulations.

Hunter training and safety program.

Authority to adopt and enforce, §15-43-238.

Rewards for information leading to the arrest of violators, §15-41-115.

Searches and seizures.

Authorized searches, §15-41-203.

WILDLIFE —Cont'd**State lands.**

Transfer of state-owned land,
§15-41-109.

State of Arkansas.

Property of state, §15-43-104.

Trails.

Wildlife observation trails pilot
program, §§15-11-701 to
15-11-709.

Wildlife habitat conservation on private lands.

Licensing agreements, §15-45-101.

WILDLIFE OBSERVATION TRAILS PILOT PROGRAM, §§15-11-701 to 15-11-709.

Advisory board, §15-11-706.

Creation of program, §15-11-704.

Criteria for acceptance of trail,
§15-11-705.

Definitions, §15-11-703.

Designation of grant recipients, considerations, §15-11-705.

Funding of program, §15-11-707.

Grant distribution, §15-11-708.

Legislative findings, §15-11-702.

Purpose of program, §15-11-704.

Reports, §15-11-709.

Title of provisions, §15-11-701.

WITNESSES.**Natural resources commission.****Oaths.**

Administration of oath to witnesses,
§15-22-207.

Refusal to testify, §15-22-208.

Subpoenas, §15-22-208.

Subpoenas.

Natural resources commission,
§15-22-208.

Summons and process.

Oil and gas commission, §15-71-112.

WORKFORCE INVESTMENT ACT, §§15-4-2201 to 15-4-2212.**Arkansas workforce investment board, §§15-4-2204 to 15-4-2206.****Boards.**

Local workforce investment boards,
§§15-4-2209 to 15-4-2212.

State board, §§15-4-2204 to 15-4-2206.

Citation of act, §15-4-2201.**Definitions,** §15-4-2203.**Governor.**

Local workforce investment areas.

Designation, §15-4-2208.

State plan for workforce investment
system strategy.

Submission to United States
secretary of labor, §15-4-2207.

Local workforce investment areas, §15-4-2208.**Local workforce investment boards, §15-4-2209.**

Certification, §15-4-2210.

Planning.

Development and submission of local
plan for workforce investment
system strategy, §15-4-2212.

Powers and duties, §15-4-2211.

Planning.

Local plan for workforce investment
system strategy, §15-4-2212.

State plan for workforce investment
system strategy, §15-4-2207.

Purpose of act, §15-4-2202.**Reports.**

State board, §15-4-2206.

State board, §15-4-2204.

Executive committee, §15-4-2205.

Powers and duties, §15-4-2206.

Title of act, §15-4-2201.**WORKFORCE INVESTMENT BOARD AND ADULT EDUCATION STUDY COMMITTEE, §§15-4-2901, 15-4-2902.**

